

TUALATIN CITY COUNCIL AND TUALATIN DEVELOPMENT COMMISSION Monday, July 28, 2008

City Council Chambers 18880 SW Martinazzi Avenue, Tualatin, Oregon

WORK SESSION begins at 5:30 p.m. REGULAR MEETING begins at 7:00 p.m.

Mayor Lou Ogden

Council President Ed Truax Councilor Chris Barhyte Councilor Monique Beikman Councilor Bob Boryska Councilor Jay Harris Councilor Donna Maddux

WELCOME! By your presence in the City Council Chambers, you are participating in the process of representative government. To encourage that participation, the City Council has specified a time for citizen comments on its agenda – Item C, following Presentations, at which time citizens may address the Council concerning any item not on the agenda, with each speaker limited to three minutes, unless the time limit is extended by the Mayor with the consent of the Council.

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are available for review on the world wide web at www.ci.tualatin.or.us, at the Library located at 8380 SW Nyberg Street, and are also on file in the Office of the City Manager for public inspection. Any person who has any question concerning any agenda item may call Administration at 503.691.3011 to make an inquiry concerning the nature of the item described on the agenda.

In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, you should contact Administration at 503.691.3011 (voice) or 503.692.0574 (TDD). Notification thirty-six (36) hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Council meetings are televised "live" on the day of the meeting on Washington County Cable Access Channel 28. The replay schedule for Council meetings can be found at www.tvctv.org.

Your City government welcomes your interest and hopes you will attend the City of Tualatin City Council meetings often.

- SEE ATTACHED AGENDA -

PROCESS FOR LEGISLATIVE PUBLIC HEARINGS

A "legislative" public hearing is typically held on matters which affect the general welfare of the entire City rather than a specific piece of property.

- 1. The Mayor opens the public hearing and identifies the subject.
- 2. A staff member presents the staff report.
- 3. Public testimony is taken.
- 4. The Council then asks questions of staff, the applicant or any member of the public who testified.
- 5. When the Council has finished its questions, the Mayor closes the public hearing.
- 6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either approve, deny, or "continue" the public hearing.

PROCESS FOR QUASI-JUDICIAL PUBLIC HEARINGS

A "quasi-judicial" public hearing is typically held for annexations, planning district changes, variances, conditional use permits, comprehensive plan changes, and appeals from subdivisions, partitions and architectural review.

- 1. The Mayor opens the public hearing and identifies the case to be considered.
- 2. A staff member presents the staff report to the Council.
- 3. Public testimony is taken:
 - a) In support of the application
 - b) In opposition or neutral
- 4. The Council then asks questions of staff, the applicant or any member of the public who testified.
- 5. When the Council has finished its questions, the Mayor closes the public hearing.
- 6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either approve, approve with conditions or deny the application, or "continue" the public hearing.

TIME LIMITS

The purpose of time limits on public hearing testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony. All persons providing testimony **shall be limited to 10 minutes**, subject to the right of the Mayor to amend or waive the time limits.

EXECUTIVE SESSION INFORMATION

Executive session is a portion of the Council meeting that is closed to the public to allow the Council to discuss certain confidential matters. No decisions are made in Executive Session. The City Council must return to the public session before taking final action.

The City Council may go into Executive Session under the following statutory provisions to consider or discuss: *ORS* 192.660(2)(a) the employment of personnel; *ORS* 192.660(2)(b) the dismissal or discipline of personnel; *ORS* 192.660(2)(d) labor relations; *ORS* 192.660(2)(e) real property transactions; *ORS* 192.660(2)(f) non-public information or records; *ORS* 192.660(2)(g) matters of commerce in which the Council is in competition with other governing bodies; *ORS* 192.660(2)(h) current and pending litigation issues; *ORS* 192.660(2)(i) employee performance; *ORS* 192.660(2)(j) investments; or *ORS* 192.660(2)(m) security issues. **All discussions within this session are confidential**. Therefore, nothing from this meeting may be disclosed by those present. News media representatives are allowed to attend this session (unless it involves labor relations), but shall not disclose any information discussed during this session.



OFFICIAL AGENDA OF THE TUALATIN CITY COUNCIL FOR JULY 28, 2008

A. CALL TO ORDER

Pledge of Allegiance

B. PRESENTATIONS, ANNOUNCEMENTS, SPECIAL REPORTS

1. Rotary Books for Uganda Project – Joyce Lockard, Beaverton Rotary Foundation

C. CITIZEN COMMENTS

This section of the agenda allows citizens to address the Council regarding any issue not on the agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

D. CONSENT AGENDA (Item Nos. 1-5)

Page #

The Consent Agenda will be enacted with one vote. The Mayor will first ask the staff, the public and the Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under "Items Removed from the Consent Agenda." At that time, any member of the audience may comment on any item pulled from the Consent Agenda. The entire Consent Agenda, with the exception of items removed to be discussed under "Items Removed from the Consent Agenda," is then voted upon by roll call under one motion.

	•	• •
1.	Resolution No	Approving Westside Commuter Rail Project TriMet and City of5 Tualatin Cooperative Maintenance Agreement [removed from the Agenda in its entirety]
2.	Resolution No. <u>4814-08</u>	Granting a Conditional Use Permit to Allow Building Materials39 and Supplies, Warehousing and Wholesaling, and Home Improvement Materials and Supplies Rental at 10700 SW Tualatin-Sherwood Road (CUP-08-02)
3.	Resolution No. <u>4815-08</u>	To Reinstate the Intergovernmental Agreement for44 Telecommunications Financial Review Services
4.	Resolution No. <u>4816-08</u>	Donating Surplus Library Shelving to the Beaverton49 Rotary Foundation
5.	2008 Annual Report of th	ne Tualatin Development Commission50
PU	BLIC HEARINGS – <u>Legis</u>	slative or Other
1.		Historic Landmark Demolition Criteria; Amending TDC71 2) and 68.080 (PTA-08-03)

F. PUBLIC HEARINGS - Quasi-Judicial None.

E.

G. GENERAL BUSINESS (Item Nos. 1-3)

1.	Ordinance No. <u>1265-08</u>	Relating to Floodplain Management; Amending Floodplain88 Definitions and Provisions; and Amending TDC 70.030, 70.130, 70.140, 70.170, and 70.180 (PTA-08-02)
2.	Ordinance No. <u>1266-08</u>	Relating to Prisoner Property Inventory Policy; Declaring97 an Emergency; and Adding New Chapter 7-5 to the Tualatin Municipal Code
3.	Ordinance No. <u>1267-08</u>	Relating to Vehicle Towing, Impounding, and Inventory

H. ITEMS REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

- I. COMMUNICATIONS FROM COUNCILORS
- J. EXECUTIVE SESSION
- K. ADJOURNMENT

CITY COUNCIL MEETING SIGN-UP SHEET

PLEASE COMPLETE TO GIVE TESTIMONY

DATE: July 28, 2008

PLEASE LIMIT TESTIMONY TO THREE MINUTES

	OPPONENT (if applicable)						
	PROPONENT (if applicable)	1					
	AGENDA ITEM(S)	Landman &		je.			
	(B		7				
LEARLY	ADDRESS	4391 Genteuros					
PLEASE PRINT CLEARL	NAME	Norm Frankey		390			

Recording Socratary



STAFF REPORT CITY OF TUALATIN

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Sherilyn Lombos, City Manager

FROM:

Brenda Braden, City Attorney

DATE:

July 28, 2008

SUBJECT:

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT

TO ALLOW BUILDING MATERIALS AND SUPPLIES, WAREHOUSING AND WHOLESALING. AND HOME

IMPROVEMENT MATERIALS AND SUPPLIES RENTAL AT 10700

SW TUALATIN-SHERWOOD ROAD (CUP-08-02).

ISSUE BEFORE THE COUNCIL:

The Council will consider a resolution that would grant a conditional use permit to allow building materials and supplies, warehousing and wholesaling, and home improvement materials and supplies rental at 10700 SW Tualatin-Sherwood Road, described as Tax Map 2S1 27AA, Tax Lot 2100.

RECOMMENDATION:

Staff recommends that the City Council approve the resolution granting CUP-08-02.

EXECUTIVE SUMMARY:

On July 14, 2008, the City Council held a quasi-judicial public hearing (CUP-08-02) to decide whether to grant a conditional use permit to Mutual Materials, which would allow a building materials and supplies, warehousing and wholesaling, and home improvement materials and supplies rental use in the General Manufacturing (MG) Planning District. At the conclusion of the public hearing, the Council approved the Staff Report [Vote 6-0] with Councilor Beikman absent, and directed Staff to bring back a resolution granting CUP-08-02.

FINANCIAL IMPLICATIONS:

Revenue for Conditional Use Permits has been budgeted for Fiscal Year 07/08.

STAFF REPORT: CUP-08-02

July 28, 2008 Page 2 of 2

PUBLIC INVOLVEMENT:

The Applicant conducted a Neighbor/Developer meeting at the Tualatin Historical Society at 8700 SW Sweek Drive on May 12, 2008, to explain the Conditional Use Permit (CUP) proposal to neighboring property owners and to receive comments. No members of the public or nearby property owners attended the meeting.

Attachments:

A. Resolution

B. Exhibit A – Affidavit of Mailing C. Exhibit B – Affidavit of Posting

D. Exhibit C – Staff Report dated July 14, 2008

RESOLUTION NO. 4814-08

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO ALLOW BUILDING MATERIALS AND SUPPLIES, WAREHOUSING AND WHOLESALING, AND HOME IMPROVEMENT MATERIALS AND SUPPLIES RENTAL AT 10700 SW TUALATIN-SHERWOOD ROAD (TAX MAP 2S1 27AA, TAX LOT 2100) (CUP 08-02).

Whereas a public hearing was held before the City Council of the City of Tualatin on July 14, 2008, upon the application of Mutual Materials, represented by Group Mackenzie, for a Conditional Use Permit to allow building materials and supplies, warehousing and wholesaling, and home improvement materials and supplies rental in the General Manufacturing (MG) Planning District at 10700 SW Tualatin-Sherwood Road, described as Tax Map 2S1 27AA, Tax Lot 2100, Washington County, Oregon, and further described in the Staff Report dated July 14, 2008, and attached as "Exhibit C".

WHEREAS notice of public hearing was given as required by the Tualatin Development Code by mailing a copy of the notice to affected property owners located within 300 feet of the property, which is evidenced by the Affidavit of Mailing marked "Exhibit A," attached and incorporated by this reference, and by posting a copy of the notice in two public and conspicuous places within the City, which is evidenced by the Affidavit of Posting marked "Exhibit B," attached and incorporated by this reference; and

WHEREAS the Council heard and considered the testimony and evidence presented on behalf of the applicant, the City staff, and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing the Council vote resulted in approval of the application [Vote 6-0] with Councilor Beikman absent; and

WHEREAS based upon the evidence and testimony heard and considered by the Council, the Council makes, enters, and adopts as its findings of fact the findings and analysis in the City staff report, dated July 14, 2008, marked "Exhibit C," attached and incorporated by reference; and

WHEREAS based upon the foregoing Findings of Fact, the Council finds that the applicant has provided sufficient evidence to demonstrate that all of the requirements of the Tualatin Development Code relative to a conditional use have been satisfied and that granting the conditional use permit is in the best interests of the residents and inhabitants of the City, the applicant, and the public generally.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. Mutual Materials, represented by Group Mackenzie, is granted a Conditional Use Permit to allow building materials and supplies, warehousing and

Resolution No. 4814-08 - Page 1 of 2

wholesaling, and home improvement materials and supplies rental in the General Manufacturing (MG) Planning District at 10700 SW Tualatin-Sherwood Road (Tax Map 2S1 27AA, Tax Lot 2100).

INTRODUCED AND ADOPTED this 28th day of July, 2008.

CITY OF TUALATIN, Oregon

Mayor

ATTEST:

City Recorder

APPROVED AS TO LEGAL FORM

CITY ATTORNEY

ITEMS REFERRED TO AS EXHIBITS IN THE FOREGOING RESOLUTION ARE ATTACHED TO THE ORIGINAL. THEY HAVE BEEN OMITTED FROM THE COUNCIL PACKET AS A CONSERVATION MEASURE. IF THESE EXHIBITS NEED TO BE EXAMINED, PLEASE CONTACT THE CITY RECORDER.

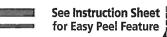
AFFIDAVIT OF MAILING

STATE OF OREGON)) SS
COUNTY OF WASHINGTON)
I, <u>Stacy Crawford</u> , being	first duly sworn, depose and say:
Exhibit "A," attached hereto and be Proposed Conditional Use Permit hereto and by this reference incorporate of the original hereof. I further are their regular addresses as de Washington County and/or Clacks	ine, 2008, I served upon the persons shown on by this reference incorporated herein, a copy of a Notice of Hearing marked Exhibit "B," attached reporated herein, by mailing to them a true and correct er certify that the addresses shown on said Exhibit "A" termined from the books and records of the amas County Departments of Assessment and envelopes were placed in the United States Mail at ally prepared thereon.
	Stay Cranford
SUBSCRIBED AND SWOR	RN to before me this day of, 2008.
	Notary Public for Oregon
	My commission expires: 2-5-11
OFFICIAL SEAL JULIE A COHEN NOTARY PUBLIC-OREG COMMISSION NO. 4130 MY COMMISSION EXPIRES FEBRUAR	50N 066

RE: CUP-08-02—CONDITIONAL USE PERMIT TO ALLOW THE WAREHOUSING AND PRIMARILY WHOLESALE DISTRIBUTION OF BUILDING MATERIALS AT 10700 SW TUALATIN-SHERWOOD ROAD (TAX MAP 2S127AA, TAX LOT 2100)











2S122DD00400 Anthro Corporation 10450 SW Manhasset Dr. Tualatin, OR 97062

2S122DD00100 BT Property LLC PO Box 28606 Atlanta, GA 30358

2S127AA01800 Black Lab Investments LLC PO Box 3850 Tualatin, OR 97062

2S127AA01200 5 Yankee MTN LLC 20460 SW Avery Ct. Tualatin, OR 97062

2S127A000401 Portland General Electric 121 SW Salmon St. Portland, OR 97204

2S126B000114 Classic Woodworking 10385 SW Avery St. Tualatin, OR 97062

2S127AA02000 Lakeside Lumber Inc 10600 SW Tualatin Sherwood Rd. Tualatin, OR 97062

2S122DD00500 1701 NW 14th LLC Portland, OR 97209 2S122DD00700 and 500 Pascuzzi Investment LLC 10250 SW North Dakota Tigard, OR 97223

2S127AA00901 Schwan's Sales Enterprises Inc PO Box 35 Marshall, MN 56258

2S127AA01100 MS Jones Holdings LLC 10655 SW Avery St. Tualatin, OR 97062

2S127A000403 City of Tualatin 18880 SW Martinazzi Ave. Tualatin, OR 97062

2S126B000106 Teton Building LLC PO Box 3750 Tualatin, OR 97062

Doug Rux, Community Development Director 18880 SW Martinazzi Ave. Tualatin, OR 97062

2S122DD00500 1603 NW 14th Ave. Portland, OR 97209 2S122DD00600 Huston James H. 2268 SE Mulberry Dr. Milwaukie, OR 97267

2S127AA90000 Arlington Commons At Tualatin 1800 SW First Ave, Suite 100 Portland, OR 97201

2S127AA0100 HG Holdings Inc PO Box 2090 Tualatin, OR 97062

2S127A000400 ORE-CAL Coca-Cola Bottling CO 1334 South Central Ave. Los Angeles, CA 90021

2S127AA00700 Gehring Limited Partnership 13215 SW Ash Dr. Tigard, OR 97223

2S126B000105 Air Liquide America LTD PTSHP PO Box 460149 Houston, TX 77056

Kaaren Hofman, City Engineer 18880 SW Martinazzi Ave. Tualatin, OR 97062



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at <u>7:00 p.m., Monday, July 14, 2008</u>, at the Council Building, 18880 SW Martinazzi Avenue, to consider:

CUP-08-02— A CONDITIONAL USE PERMIT FOR THE WAREHOUSING AND PRIMARILY WHOLESALE DISTRIBUTION OF BUILDING MATERIALS.

In reviewing the conditional use the City Council must find that:

- (1) The use is listed as a conditional use in the underlying planning district;
- (2) The characteristics of the site are suitable for the proposed use;

(3) The proposed use is timely;

- (4) The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the uses of surrounding properties for the primary uses listed in the underlying planning district;
- (5) The proposal satisfies those objectives and policies of the Tualatin Community Plan that are applicable to the proposed use.

All citizens are invited to attend and be heard upon the application. Failure of an issue to be raised in the hearing, in person, or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the State Land Use Board of Appeals (LUBA) based on that issue. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to the decision maker to respond to the issue precludes an action for damages in circuit court.

Individuals wishing to comment may do so in writing to the Planning Division prior to the hearing and/or present written and/or verbal testimony to the City Council at the hearing. Hearings are commenced with a staff presentation, followed by testimony by proponents, testimony by opponents, and rebuttal. The time of individual testimony may be limited. If a participant requests, before the hearing is closed, the record shall remain open for at least 7 days after the hearing.

Copies of the applications, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at the City Library and Planning Division at least seven days prior to the hearing, and will be provided at reasonable cost. For information contact Colin Cortes, Associate Planner, at (503) 691-3024. This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON

By: Sherilyn Lombos City Recorder

file: CUP-08-02 Mailed: 6/24/08

AFFIDAVIT OF POSTING

STATE OF OREGON)) SS
COUNTY OF WASHINGTON)
I, Stacy Crawford , being first duly sworn, depose and say:
That at the request of Sherilyn Lombos, City Recorder for the City of Tualatin, Oregon; that I posted two copies of the Notice of Hearing on the 24 th day of June, 2008, a copy of which Notice is attached hereto; and that I posted said copies in two public and conspicuous places within the City, to wit:
1. U.S. Post Office - Tualatin Branch
2. City of Tualatin City Center Building
Dated this <u>24th</u> day of <u>June</u> , 2008.
Stacy Crawford Stacy Crawford
Subscribed and sworn to before me this $15t day of Tuy$, 2008.
Notary Public for Oregon
OFFICIAL SEAL JULIE A COHEN NOTARY PUBLIC-OREGON COMMISSION NO. 413066 MY COMMISSION EXPIRES FEBRUARY 5, 2011

RE: <u>CUP-08-02—CONDITIONAL USE PERMIT TO ALLOW THE WAREHOUSING AND PRIMARILY WHOLESALE DISTRIBUTION OF BUILDING MATERIALS AT 10700 SW TUALATIN-SHERWOOD ROAD (TAX MAP 2S127AA, TAX LOT 2100)</u>



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at <u>7:00 p.m., Monday, July 14, 2008</u>, at the Council Building, 18880 SW Martinazzi Avenue, to consider:

CUP-08-02— A CONDITIONAL USE PERMIT FOR THE WAREHOUSING AND PRIMARILY WHOLESALE DISTRIBUTION OF BUILDING MATERIALS.

In reviewing the conditional use the City Council must find that:

- (1) The use is listed as a conditional use in the underlying planning district;
- (2) The characteristics of the site are suitable for the proposed use;

(3) The proposed use is timely;

- (4) The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the uses of surrounding properties for the primary uses listed in the underlying planning district;
- (5) The proposal satisfies those objectives and policies of the Tualatin Community Plan that are applicable to the proposed use.

All citizens are invited to attend and be heard upon the application. Failure of an issue to be raised in the hearing, in person, or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the State Land Use Board of Appeals (LUBA) based on that issue. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to the decision maker to respond to the issue precludes an action for damages in circuit court.

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Copies of the applications, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at the City Library and Planning Division at least seven days prior to the hearing, and will be provided at reasonable cost. For information contact Colin Cortes, Associate Planner, at (503) 691-3024. This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON

By: Sherilyn Lombos City Recorder

file: CUP-08-02 Mailed: 6/24/08



STAFF REPORT CITY OF TUALATIN

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Sherilyn Lombos, City Manager

FROM:

Doug Rux, Community Development Director

Colin Cortes, Assistant Planner C.C.

DATE:

July 14, 2008

SUBJECT:

CONDITIONAL USE PERMIT FOR BUILDING MATERIALS AND

SUPPLIES, WAREHOUSING AND WHOLESALING, AND HOME IMPROVEMENT MATERIALS AND SUPPLIES RETAIL; TDC

SECTION 61.030(1). (CUP-08-02)

ISSUE BEFORE THE CITY COUNCIL:

A request for a conditional use permit (CUP) that would allow the warehousing and wholesale distribution of building materials and retail sales of home improvement materials and supplies in the General Manufacturing (MG) Planning District at 10700 SW Tualatin-Sherwood Road.

RECOMMENDATION:

Staff recommends the City Council consider the staff report and supporting attachments and direct staff to prepare a resolution granting CUP-08-02.

EXECUTIVE SUMMARY:

- This matter is a quasi-judicial public hearing.
- This matter is a conditional use permit (CUP) request.
- The applicant is Mutual Materials, represented by Group Mackenzie.
- The subject property is 5.0 acres and is Tax Lot 2S 1 27AA 2100 located at 10700 SW Tualatin-Sherwood Road in the MG Planning Districts. TriMet through its contractor Stacy and Witbeck, Inc. uses the undeveloped property temporarily to store and deliver rail ties for construction of Washington County Commuter Rail known as the Westside Express Service (WES). Vicinity and tax maps and the site plan are included respectively as Attachments A, B and C. The applicant's materials including a site plan are included as Attachment D.
- Partition PAR-02-03 created the lot in 2002.
- "Building materials and supplies, wholesale sales, and warehousing," is a conditional use per TDC Section 61.030, which incorporates by reference the conditional uses listed in TDC 60.040.

STAFF REPORT: CUP-08-02 - Mutual Materials

April 14, 2008 July 14, 2008

Page 2 of 3

• Retail sales of home improvement materials and supplies is a conditional use per TDC 61.030(1).

- The applicant predicts that 95% of sales will be wholesale with the remaining 5% of sales as retail.
- The home improvement materials and supplies retail sales use allows for showroom and retail sales above the cap established by TDC 61.010.
- The applicant submitted an architectural review application (AR-08-13) for site development approval premised on approval of CUP-08-02.
- The applicant has prepared a narrative that addresses the Conditional Use Permit (CUP) approval criteria (Attachment D). Attachment E is the Background Information and staff has reviewed the application material and included pertinent excerpts in the Analysis and Findings section of this report (Attachment F). Staff recommends no conditions of approval.
- The applicable policies and regulations that apply to the proposed conditional use in the MG Planning District include TDC 7.040(3) Manufacturing Planning District Objectives – General Manufacturing; 32.030 Conditional Uses – Siting Criteria; and, 61.010 General Manufacturing Planning District – Purpose. The Analysis and Findings (Attachment F) considers the applicable policies and regulations.
- Before granting the proposed amendment, the City Council must find that the criteria listed in TDC 32.030 are met: The Analysis and Findings (Attachment F) examines the application in respect to the criteria for granting a CUP.
- The Council has taken no previous land use action related to the subject property.

OUTCOMES OF DECISION:

Approval of the Conditional Use Permit (CUP) request will result in the following:

1. The applicant is allowed to obtain approval for an architectural review (AR) application proposing a showroom area greater than 5% of the gross floor area (GFA) illustrated on the preliminary site plan.

Denial of the Conditional Use Permit request will result in the following:

1. The applicant will not be allowed to construct showroom area greater than 5% of the gross floor area (GFA).

ALTERNATIVES TO RECOMMENDATION:

The alternatives to the staff recommendation for the Council are:

- Approve the proposed conditional use permit (CUP) with conditions the Council deems necessary.
- Deny the request for the proposed CUP.
- Continue the discussion of the proposed CUP and return to the matter at a later date.

STAFF REPORT: CUP-08-02 - Mutual Materials

April 44,=2008 July 14, 2008

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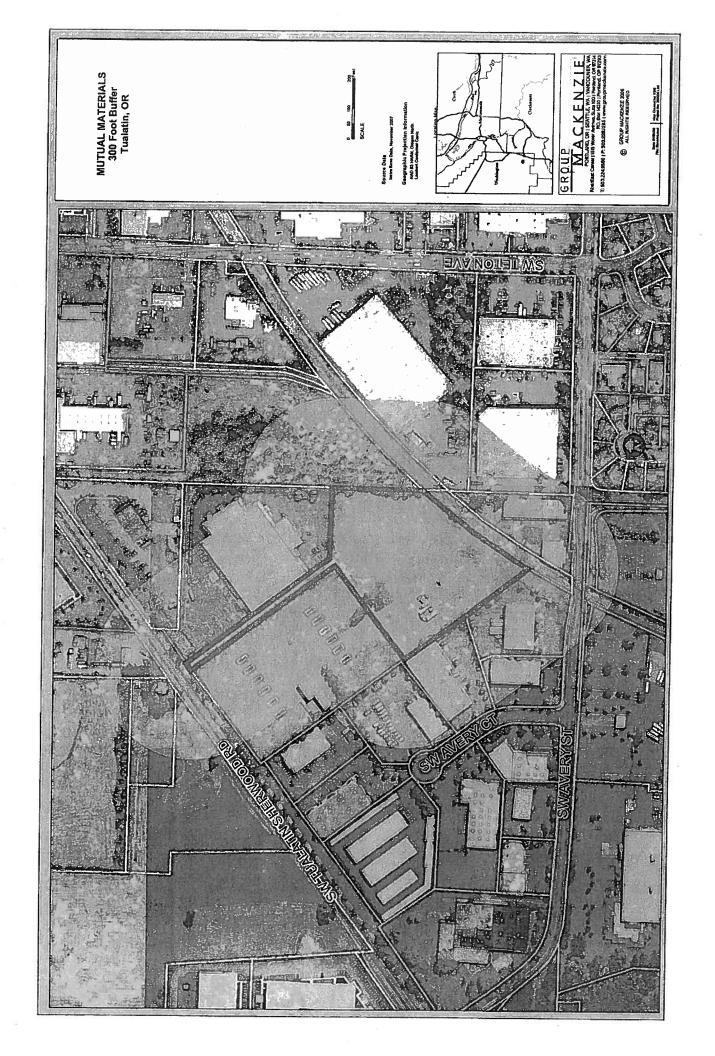
FINANCIAL IMPLICATIONS:

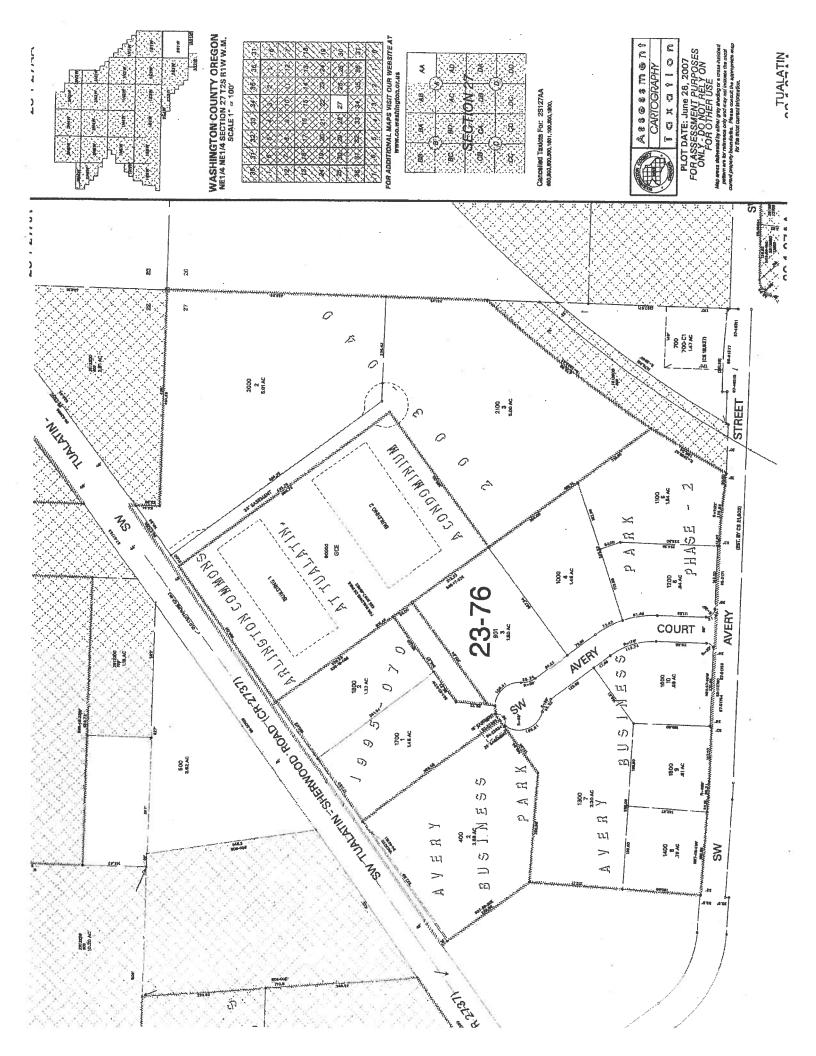
Revenue for conditional use permits has been budgeted for Fiscal Year 07/08.

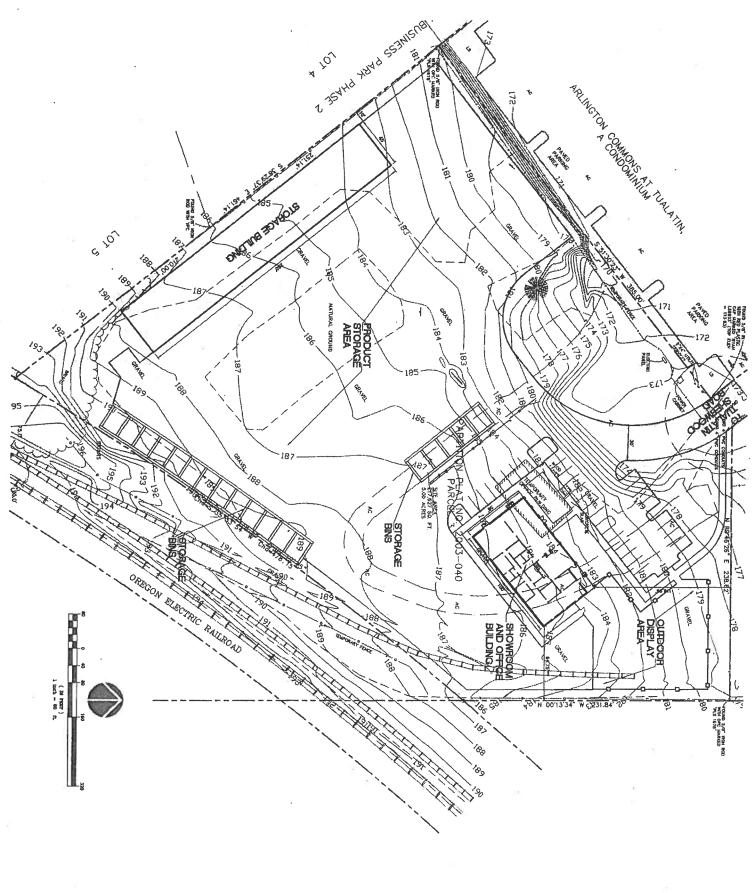
PUBLIC INVOLVEMENT:

The Applicant conducted a Neighborhood/Developer meeting at the Tualatin Historical Society at 8700 SW Sweek Drive on May 12, 2008, to explain the conditional use permit (CUP) proposal to neighboring property owners and to receive comments. No members of the public or nearby property owners attended the meeting.

- Attachments: A. Vicinity Map
 - B. Tax Map
 - C. Site Plan
 - D. Application Materials and Supporting Documents
 - E. Background
 - F. Analysis and Findings
 - G. Engineering Division memo dated 6/18/2008
 - H. Clean Water Services (CWS) memo dated 6/10/2008







2080081.00

ORIGINAL SHEET:
CONDITIONAL
USE
SITE
PLAN

5.16.2008

HOTSONCIA KILLIBM MOTHE ITOKULIM WATER WATER OF STATEMENT STORE OF LICENSTAND STORE STORE

PROJECT:
MUTUAL MATERIALS
TUALATIN,
OREGON



MACKENZIE

Civil Engineering Structural Engineering Transportation Planning Landscape Architecture Architecture Interior Design Land Use Planning

Portland OR Vancouver WA 503.224.9560 360.696.7879

Seattle WA 206.749.9993

MACKENZIE

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CITY OF TUALATIN RECEIVED

MAY 1 6 2008

COMMUNITY DEVELOPMENT PLANNING DIVISION

Submittal

Conditional Use Permit

To

City of Tualatin Planning Division

For

Mutual Materials Company

SubmittedMay 16, 2008

Project Number 2080081.01

GROUP MACKENZIE Since 1960

I. PROJECT SUMMARY

The applicant requests Conditional Use Permit approval to allow wholesale and minor retail sales of Building Materials and Supplies, and also Conditional Use Permit approval to allow for showroom area greater than allowed in the base zone.

Applicant/Owner:

Mutual Materials

605 - 119th NE

Bellevue, Washington 98005

(425) 452-2351

Attention: Kendall Anderegg

Land Use Planner:

Group Mackenzie PO Box 14310

Portland, Oregon 97293

503-224-9560

Contact: Theresa Paulson, Senior Planner/AICP

Cross Streets:

SW Tualatin Sherwood Road

Map/Tax Lot of Site:

2S 1W 27AA tax lot 2100

Site Size:

5.00 acres (217,627 SF)

Source: 3/5/08 Survey by Hickman and Associates, Inc.

Zoning:

The site is zoned MG (General Manufacturing)

Applicable Criteria:

City of Tualatin Development Code Chapter 7 - Manufacturing Districts

Chapter 61 - General Manufacturing Planning District

Chapter 32.030 - Conditional Uses

II. INTRODUCTION

The Mutual Materials Company, which started in 1900 and has 16 locations in the western United States, distributes products to wholesale customers, including mason and hardscape contractors, builders, lumberyards, major home improvement centers and other retail outlets. These products include brick masonry, cultured stone, concrete block, architectural slab and pavers.

Mutual Materials branches typically range from 3 to 5 acres and include a small building for branch administration. In addition, branches include a showroom in which materials are displayed and samples can be checked out to architects or contractors. On occasion, contractors and architects direct their clients to the showroom to select products, and once selected, the products are ultimately purchased by the architect or contractor (wholesale sales). The indoor office and showroom areas are accessory to the primary use of the site, which is wholesale sales, storage and distribution of products. Most products are packaged on wood pallets and stored either within shed structures or outside on paved yard spaces.

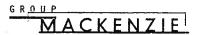
Mutual Materials sales are primarily wholesale in nature. On average, the maximum retail sales for a Mutual Materials branch is 5% of total sales, with at least 95% wholesale sales. Because some of Mutual Materials' largest clients are large building supply retail stores, the company does not desire to compete with their customers. Typically any retail sale transactions occur if a building material retail store discontinues a product and additional material is needed to complete a project. Similar to the existing branch operations, the proposed Mutual Materials branch in Tualatin will be primarily wholesale sales, and retail sales of more than 5% are not anticipated.

CURRENT SITE CONDITIONS

The subject property is located south of SW Tualatin Sherwood Road in Tualatin, Oregon The parcel is also described as Lot #3 of a partition completed by Specht Development in 2002 (PAR-02-03) (see Exhibit B). Lot #1 has since been developed as Arlington Commons, an industrial condominium development, which consists of two buildings. Lot #2 was developed with a Lakeside Lumber facility which processes and warehouses cedar siding products. Previously, the subject site supported the manufacturing of concrete pipes and culverts by Oregon Culvert. The site is currently being used to store and deliver rail ties by METRO as part of the commuter rail project.

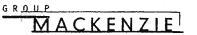
The site is bound by Lakeside Lumber and Arlington Commons to the north (MG zone), and an industrial park to the west (MG zone), an undeveloped industrial parcel to the east (MG zone), and railroad tracks and industrial uses to the south (ML zone). Further south, a residential subdivision is located approximately 350 feet from the southwest corner of the property, though separated by an active rail line and existing industrial development (see Exhibit C).

The site is a flag lot with only driveway frontage (i.e., no building frontage) to Tualatin Sherwood Road, which is classified as a major arterial by Washington County. The site accesses Tualatin-Sherwood Road via a driveway shared with Lakeside Lumber and Arlington Commons.



PROPOSED DEVELOPMENT

Though this application is for Conditional Use approval only, a preliminary site plan has been submitted for context (see Exhibit D). If approval of the requested conditional use is granted, it is the intent of the contract purchaser to then submit for Architectural Review approval, similar to the preliminary site plan. The proposed Mutual Materials branch is to include an approximately 6,500 SF building, housing showroom and office space accessory to the primary distribution use. The remainder of the site will be designed for outdoor storage and display, yard area, customer and employee parking, and landscaping. An approximately 11,700 SF, three-sided metal structure is proposed along the west property line. This structure will house materials that must be sheltered from the elements. Storage bins are proposed along the south property line for materials that do not need to be protected from the sun, wind, rain, or snow.



III. CHAPTER 32 - CONDITIONAL USES

The Tualatin Development Code acknowledges that land use planning is dynamic in nature and uses not listed outright may be permitted in certain zones based on many factors. The code allows for a Conditional Use process, in which some uses may be allowed if specific criterion is satisfied. This application is for Conditional Use approval. As such, the following addresses the five criteria for review of Conditional Use applications.

Section 32.030 Criteria for Review of Conditional Uses.

The City Council may allow a conditional use, after a hearing conducted pursuant to TDC 32.070, provided that the applicant provides evidence substantiating that all the requirements of this Code relative to the proposed use are satisfied, and further provided that the applicant demonstrates that the proposed use also satisfies the following criteria:

(1) The use is listed as a conditional use in the underlying planning district.

Response: According to City Staff, the wholesale sales and distribution of masonry and hardscape materials is a classified as a Conditional Use in the MG zone. Section 61.030 of the Tualatin Development Code states that all conditional uses listed in the ML zone (Section 60.040) are also considered conditional uses in the MG zone. Section 60.040.b. lists "Building materials and supplies, wholesale sales, and warehousing" as a conditional use. As such, the proposed use is classified as a conditional use in the MG zone.

In addition, the proposed development also warrants Conditional Use approval as the proposed showroom area exceeds the maximum allowance. Section 61.010 declares that a primary purpose of the MG zone is to:

... allow the retail sale of products manufactured, assembled, packaged or wholesaled on the site provided the retail sale area, including the showroom area, is no more than 5% of the gross floor area of the building not to exceed 1,500 SF.

The proposed development is for wholesale sales, storage and distribution of materials supplied by Mutual Materials, with a minor retail sales component of the products packaged and wholesaled on site, as allowed by this code provision. However, due to the nature of the products, the primary use of the site occurs outside of a building, and the accessory administration and showroom uses occur inside of a building. Therefore, the building itself is a minor component to the primary use of the site. The primary use occupies the majority of the site, including an 11,700 SF storage shelter, outdoor storage bins, large storage yards, truck scales and outdoor product display area. In total, this area is equal to 70% (3.53 acres/153,899 SF) of the total site area. Conversely, the accessory use, which occupies the only building on-site, has a 5,600 SF footprint (is 6,500 SF in total size), or 2.6% of the total site area. As such, the nature of the Mutual Materials facility is unique in that the primary use does not occur within a building, but rather outside of a building.

The criteria for determining allowed retail/showroom area is solely based on gross floor area, regardless if the primary use of the site occurs outside of a building. Therefore, the determination of allowable showroom area based on the proposed building is not reflective of the actual area used for the primary use. Based on the retail provision outlined above, a maximum of 325 SF is permitted for a showroom of a 6,500 SF building. The proposed showroom for the proposed building is approximately 1,350 SF, exceeding the maximum allowed showroom area. However, if the primary uses were to be located within a building (warehouse and distribution), the facility would require a 153,899 SF building, and therefore would be allowed up to 1,500 SF of retail/showroom area. As such, the proposed

1,350 SF showroom area would be allowed under Section 61.010 and Conditional Use approval for the showroom would not be required.

The proposed 1,350 SF showroom area is used primarily by contractors and architects, and also their clients who may be directed to the general showroom to select materials for the contractors to purchase. As such, although the City's code classifies the proposed showroom as 'retail' area, the majority of sales related to the 1,350 SF showroom area is for wholesale sales. On average, Mutual Materials branches do not exceed 5% of retail sales per year, as Mutual Materials is a wholesale distribution company, making the showroom area virtually for wholesale sales. Assuming 5% retail sales, based on a 1,350 SF showroom area, only 67.5 SF is related to retail sales, while the remaining 1,282.5 SF is related to wholesales sales. Based on the provision of Section 61.010, the showroom area for retail sales is less than the maximum allotment of 325 SF for a 6,500 SF building, thereby meeting the intent of the regulation.

Because of the unique nature of Mutual Materials facilities, in which the primary use is located outside of a building, and because the entire showroom area is considered retail space though the branch is anticipated to have no more than 5% retail sales per year (with 95% wholesale sales), this application also requests conditional use approval to allow 1,350 SF of showroom area. This criterion is met.

(2) The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements and natural features.

Response: The site is well-suited for the proposed wholesale and distribution of building materials. The subject site is relatively flat and has been previously graded for past industrial uses, including the manufacturing of culverts. According to City of Tualatin mapping (Map 72-3), no significant natural resources exist on the property. The site has a relatively rectilinear shape, which is conducive to the wholesale and distribution use. The site does not have building frontage on SW Tualatin Sherwood Road, which is not required for industrial uses. True retail uses require building frontage and high visibility from the adjacent right-of-way. However, the proposed use is an industrial use, and the facility is a destination location. Typical Mutual Materials branches are 3 to 5 acres in size, and the subject site is 5 acres, meeting this requirement. Access to the site and the requisite infrastructure was constructed as a condition of the 2002 partition. The majority of the adjacent properties are already developed with industrial uses.

Based on the site characteristics and surrounding development, the property is well suited for the proposed wholesale sales, storage and distribution of building materials. This criterion is met.

(3) The proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use.

Response: The site is well served by an existing transportation system, public facilities and services, as demonstrated below.

Water, Sewer, Storm

A 24" storm line, 12" water line and 8" sanitary sewer line are located within Tualatin Sherwood Road. As a condition of the 2002 partition, water, sewer and storm lines were stubbed to the site, within the private access drive connecting to SW Tualatin Sherwood Road. The existing 8" sewer line, 2" water line and 15" storm lines are suitable for a warehouse and distribution facility with a 1,350 SF showroom. According to the City, there is adequate water and sewer capacity for the proposed use.

Transportation

A Traffic Impact Analysis was conducted as a part of this conditional use application (see attached Traffic Impact Analysis). The analysis studied the potential trip generation for the following three scenarios:

- Development of the site with an allowed use (manufacturing);
- Development of the site with retail use only (building materials) allowed by conditional use; and
- Development of the site with the proposed Mutual Materials branch (wholesale sales, warehouse and distribution of building supplies, and minor retail use and showroom area) allowed by conditional use.

The analysis therefore compared a reasonable worst case development scenario under an existing allowed use, a reasonable worst case scenario for a strictly retail use, and the proposed Mutual Materials development.

Under the current MG zoning, assuming 40% building coverage, the site could house a 78,400 SF manufacturing facility. Based on data contained in the Institute of Transportation Engineers (ITE) Trip Generation Manual, 7th edition, a manufacturing facility of this size would generate 58 PM peak hour trips.

A retail development of a similar use and similar trip generation rate (4.49 trips per thousand square feet (KSF)), Building Materials (Land Use 812) was also studied. A review of ITE data showed the data set upper limit to be 20,000 SF. This is smaller than the 60,000 SF allowed by code, but is more appropriate for a Building Material sales development where the building is secondary to outdoor storage and display. Based on data contained in the Institute of Transportation Engineers (ITE) Trip Generation Manual, 7th edition, a building materials retail development of this size would generate 90 PM peak hour trips.

An existing Mutual Materials site in Vancouver, Washington was surveyed to determine the trip generation rate for the proposed development in Tualatin. The Vancouver branch building is 4,144 SF in size, and has the same wholesale, showroom, and office uses as the proposed Tualatin development; however, the Tualatin development will have a larger gross square footage. The Vancouver site was surveyed on January 31, 2008 for the PM peak hour. A PM peak hour trip generation rate of 6.52/KSF was calculated based on the survey of the existing site. Based on this data, the proposed facility would generate 42 PM peak hour trips.

The following table presents a summary of the trip generation comparison:

TABLE 1 – AM AND PM PEAK HOUR TRIP GENERATION								
Development	Land Use	Square Feet	AM			PM		
			Enter	Exit	Total	Enter	Exit	Total
Manufacturing	140	78,400	44	13	57	21	37	58
Retail (Building Materials)	812	20,000	35	17	52	42	48	90
Mutual Materials		6,500	12	30	42	12	30	42

As shown in Table 1, if the requested conditional use application is approved, the estimated PM peak hour trips is approximately 28% less than a manufacturing development allowed outright in the MG zone. Though this application also requests allowance of a 1,350 SF showroom area and minor retail sales, the proposed

development generates less than half the number of trips that a building supply retail center would generate.

In addition to trip generation analysis, the TIA studied the operation of the intersection of Tualatin-Sherwood Road/SW 112th Avenue/Avery Street intersection, under Washington County jurisdiction. Based on the Washington County's standards for acceptable level of service for signalized intersections, the proposed 6,500 SF Mutual Materials development results in the same level of service as a manufacturing development allowed outright in the MG zone. In addition, the study area intersection meets Washington County operating standards in the existing and build-out year scenarios.

In summary, based on the TIA conducted for this application and an analysis of existing infrastructure, approval of the requested conditional use is consistent with the existing transportation, public facilities, and service infrastructure. This criterion is met.

(4) The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying planning district.

Response: The subject site is bound by MG and ML zoned properties and adjacent to a functioning rail line. All but one of the adjacent properties is developed with industrial uses. The proposed wholesale sales, storage and distribution use is much less intense than uses allowed outright in the MG zone, such as chemical warehouse and distribution, battery manufacturing or a planing mill.

The nearest residential zoned property is approximately 350 feet from the southwest corner of the property, and is separated from the subject property by a railroad right-of-way and existing industrial development (ML zoned property). However, the southern edge of the property will be visible by users of the new commuter rail line. Therefore, the proposed development will incorporate site design features (such as landscaping) to create an attractive southern edge. In an effort to shield the outdoor storage yard from view, outdoor storage bins are located along the south property line, adjacent to the rail right-of-way. A generous 10-foot' landscape buffer, consisting of evergreen shrub material at least 6 feet in height, is anticipated to shield the bins from view. In addition, the 11,700 SF metal shed structure, located along the west property boundary, will have a masonry façade, and may thereby be more aesthetically pleasing than a metal siding structure. The use of the masonry is not only more attractive than a typical metal siding, but it also showcases materials distributed on-site.

Section 61.075 of the Tualatin Development Code requires sound barrier construction to intercept all straight-line lateral paths of 450 feet or less between a residential property and any large doorways or building mechanical devices. Based on the proposed site plan, the storage bins are the only program element located within 450 feet of the nearest residentially zoned property. No overhead doors or building mechanical devices are proposed on the property within 450 feet. As such, no noise sources are located within the noise barrier area.

Trucks are anticipated to periodically enter and exit the storage yard for shipping and receiving of construction materials. These shipping and receiving activities will occur at a distance greater than 450 feet from the closest residentially zoned property. In addition, operations will comply with the City's sound ordinance which requires activity past 9:00 p.m. to be fewer than 60 decibels. Furthermore, it should be noted that a functioning railway and existing industrial development exist between the subject property and the nearest adjacent residential property.

As shown above, potential impacts are mitigated by building orientation, generous landscape buffers, specialty building materials for a shed structure, and compliance with the City's established noise regulations. As such, the proposed development is not anticipated to increase impact greater than what exists with the current surrounding development.

(5) The proposal satisfies those objectives and policies of the Tualatin Community Plan that are applicable to the proposed use.

Response: The Tualatin Development code describes each of the four planning districts and the planning objectives for each district. The following lists the four objectives of the General Manufacturing planning district and how the approval of the proposed conditional use application still meets the intent of the associated objectives.

Section 7.040 Manufacturing Planning District Objectives.

- (3) General Manufacturing Planning District (MG).
- (a) Suitable for light manufacturing uses and also for a wide range of heavier manufacturing and processing activities. Such areas could be expected to be more unsightly and to have more adverse environmental effects. Rail access and screened open storage would be allowed in this area, conforming to defined architectural, landscape and environmental design standards. Also suitable is the retail sale of products manufactured, assembled, packaged or wholesaled on the site provided the retail sale area, including the showroom area, is no more than 5% of the gross floor area of the building not to exceed 1,500 square feet. Also suitable for the retail sale of home improvement materials and supplies pro-vided it is not greater than 60,000 square feet of gross floor area per building or business and subject to the Special Commercial Setback from arterial streets as generally illustrated in Map 9-5 and specifically set forth in TDC 61.035.

Response: The proposed development is for wholesale sales, storage and distribution of materials supplied by Mutual Materials, with a minor retail sales component of the products packaged and wholesaled on site, as allowed by this code provision. Because the wholesale sale, storage and distribution of building materials is listed as a conditional use, and because this application requests approval of a showroom area greater than 5% of the building area, this application requests Conditional use approval (See response to Section 32.030). This criterion is met.

- (b) The following uses within the General Manufacturing District shall comply with the following size limits established by Metro. Retail sale, retail service and professional service uses shall be no greater than 5,000 square feet of sales or service area per outlet, or not greater than 20,000 square feet of sales or service area for multiple outlets in a single building or in multiple buildings that are part of the same development project, with the following exceptions.
- (i) Application of the Industrial Business Park Overlay District (TDC Chapter 69).
- (ii) The retail sale of products manufactured, assembled, packaged or wholesaled on the site provided the retail sale area, including the show-room area, shall be no more than 5% of the gross floor area of the building not to exceed 1,500 square feet.
- (iii) Within the Special Setbacks for Commercial Uses Area (TDC 61.035) the retail sale of home improvement materials and supplies is allowed provided it is not greater than 60,000 square feet of

gross floor area per building or business and subject to the Special Commercial Setback from arterial streets as generally illustrated in Map 9-5 and specifically set forth in TDC 61.035.

Response: The proposed retail/showroom area is 1,350 SF in size. As such, this criterion does not apply.

(c) In accordance with the Industrial Business Park Overlay District, TDC Chapter 69, selected office and retail uses are allowed to pro-vide services to businesses and employees. The purpose is also to allow certain commercial ser-vice uses in the Commercial Services Overlay shown in the specific areas illustrated on Map 9-5 and allow selected commercial uses subject to distance restrictions from residential areas and subject to the Special Commercial Setback from arterial streets as generally illustrated in Map 9-5 and specifically set forth in TDC 61.035.

Response: The proposed development is not within the Commercial Services Overlay. It should be noted that a portion of the private drive is located within this overlay, but not the proposed use. Therefore, this criterion does not apply.

(d) The heaviest manufacturing uses that are environmentally adverse or pose a hazard to life and safety will not be allowed. [Amended Ord. 592-83 §34, 6/13/1983; Ord. 942-95, 3/27/1995; Ord. 1003-98, 4/27/1998; Ord. 1026-99, 8/9/1999; Ord. 1046-00, 2/14/2000 (Ord. 1133-03, 3/24/2003; Ord. 1212-06; 6/26/2006)]

Response: The proposed warehouse distribution use with minor retail and showroom area is not considered a heavy manufacturing use and will therefore not have significant environmentally adverse effects or significant life and safety hazards. This criterion is met.

IV. CONCLUSION

Mutual Materials, which is a wholesale supplier of brick, concrete masonry and hardscape products, provides materials directly to contractors and masons and also to distributors such as independent lumber yards, major home improvement centers, masonry suppliers and retail outlets. Mutual Materials is proposing a new branch facility, which will be for wholesale sales, storage and distribution of products and will also include a minor retail sales and showroom component. The provision of minor retail sales associated with products warehoused on site is consistent with the provisions of the MG zone.

Due to the unique characteristics of the proposed facility, however, the primary use is located outside of a building. As such, the calculation of the allowed showroom area is disproportionate to the actual primary use as the calculation only considers building area, not actual use area outside of a building. In addition, the calculation does not differentiate between showroom area related to wholesale sales and showroom area related to retail sales. Because the anticipated retail sales for the proposed Mutual Materials branch is estimated less than 5%, the associated retail sale area is proportional to 67.5 SF, well under the provision of Section 61.010.

Per City Staff, the proposed wholesale sales and distribution of brick, concrete masonry and hardscape products are classified as building materials, thereby requiring conditional use approval. However, the subject materials are similar in nature to other materials allowed outright in the MG zone, such as the storage and retail sales of rock and gravel. Therefore, the subject products are not dissimilar to the storage and distribution of materials allowed outright in the MG zone.

Based on the above justification, combined with the fact that the allowance of this use will not disrupt existing development or preclude surrounding property from developing according to the underlying planning districts, approval of the requested Conditional Use application is warranted.

V. EXHIBITS

- A. Land Use Application Conditional Use Permit
- B. Assessors Map (Map# 18S12E04A)
- C. Site Aerial and Project Boundary Map
- D. Site Plan
- E. Neighborhood Meeting Materials
 - Neighborhood Meeting Letter
 - Mailing List
 - Preliminary Site Plan
 - 300' Buffer Notice Map
- F. Title Report and Deed

APPLICATION FOR CONDITIONAL USE

City of Tualatin Community Development Department - Planning Division 18880 S.W. Martinazzi Avenue Tualatin, OR 97062 503-691-3026

Case No. CUP-08-12
Fee Rec'd. \$1225 Receipt No. 4633
Date Rec'd. 5-16-08
By Scrawfold

	PLEASE PRINT IN IN	K OR TYPE			
Code Section 61.030 Con	nditional Use to allow	Showroom and build	ing material	, wholesale sal	es
16		Plann	ing Distri	ct (MG) Gene	ral Manufacturing
	ttn: Joe Curran		one	3) 646-2202	1
	verton Creek C	Beaverton	OR	97006	
(street)	FP Tualatin, LLC	(city)	(state)	(ZIP)	
	n Oregon limited y: Specht Propert		ompany		****
Ē	Its <u>Manager</u> y: Gregory L. Spe	cht Preside	ent		
<u> </u>	AK /				····
	signature of owner(s)				
Applicant's Name Group Mackenzie			Phone	(503) 224-956	0
Applicant's Address1515 SE Water Ave	enue	Portland	OR	97214	
(street)		(city)	(state)	(ZIP)CIT	Y OF TUALATI
Applicant is: Owner Contract Purc	haser Developer	Agent X			MAY 1 6 2008
Other					
Contact person's name Theresa Paulson	- Senior Planner		Phon	e (503) 217419	UNITY DEVELOPMEN SMINING DIVISION
Contact person's address1515 SE Water A	venue	Portland	OR	97214	
(street)		(city)	(state)	(ZIP)	
Assessor's Map Number 2S127AA	Tax Lot	Number(s)	00	**	· · · · · · · · · · · · · · · · · · ·
Address of Property 10700 SW Tualatin-S	herwood Road		Lot A	rea 5.0	acres
Existing Buildings (Number and Type)_	None				
Current Use Vacant Lot					
As the person responsible for this apparagnets application and its attachments, und supplied is as complete and detailed a	erstand the requirement	s described here	ein, and s	tate that the	ead the above information
Name Www EM Son Address 1515 SE Water Av (street)	Date 5.16.	Phone _ or Hand (city)	903	224.9 9721 (ZIP)	760

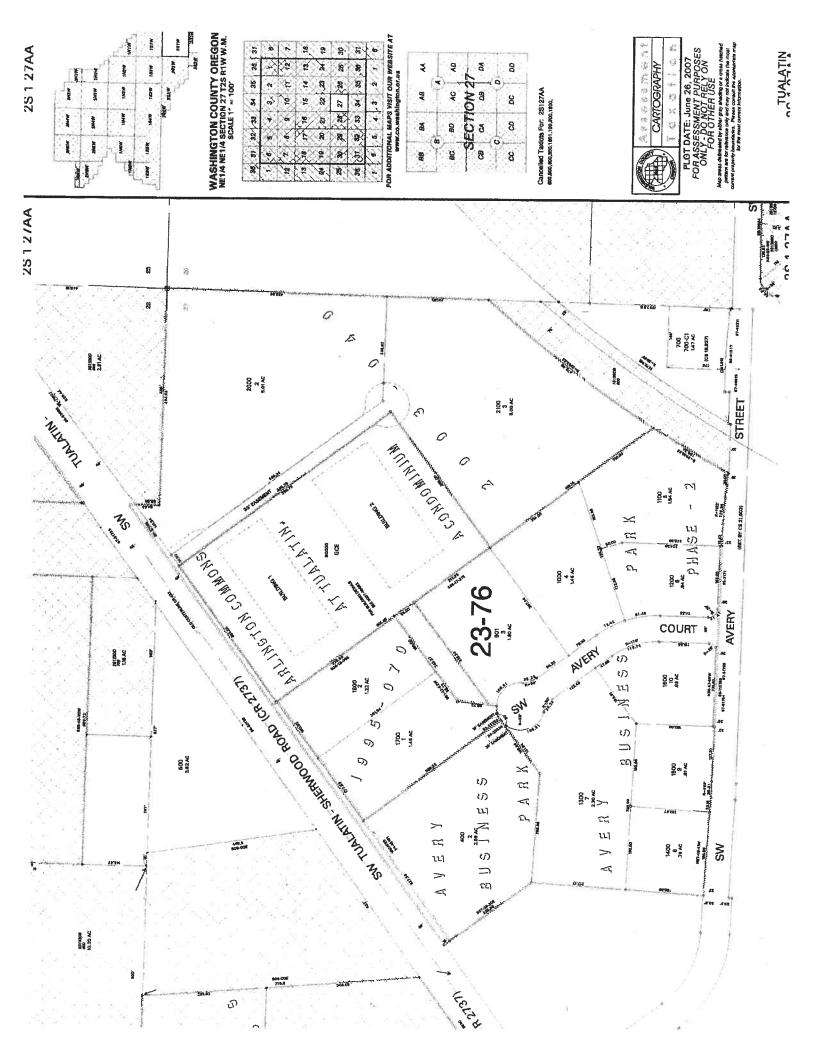


Exhibit C Vicinity Map

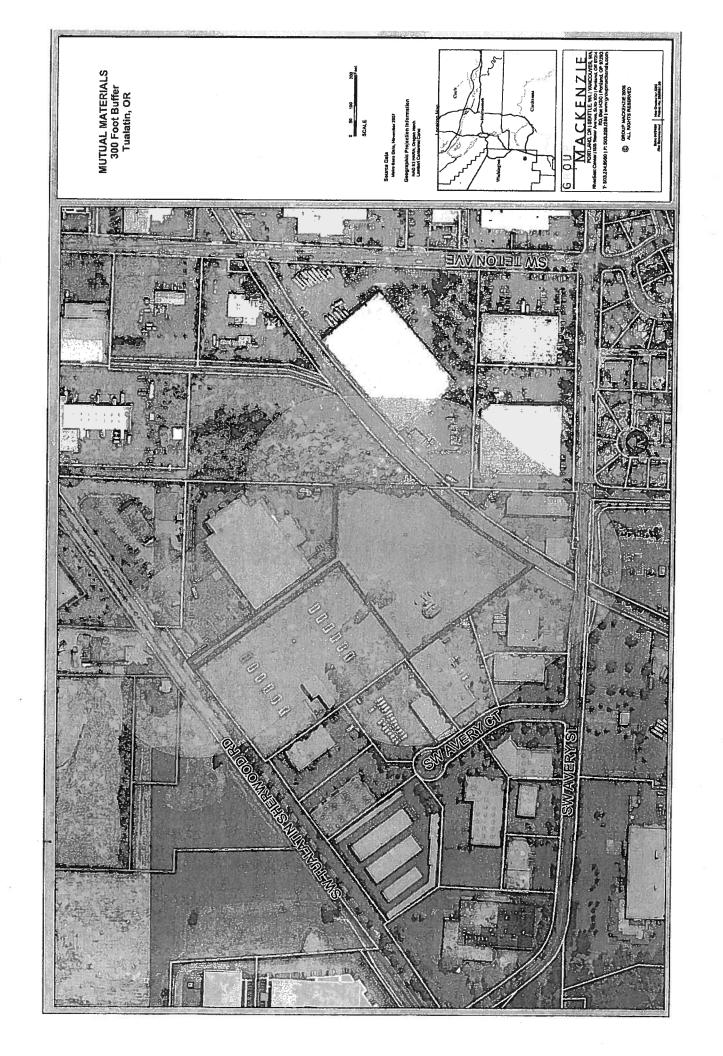


Exhibit DPreliminary Site Plan

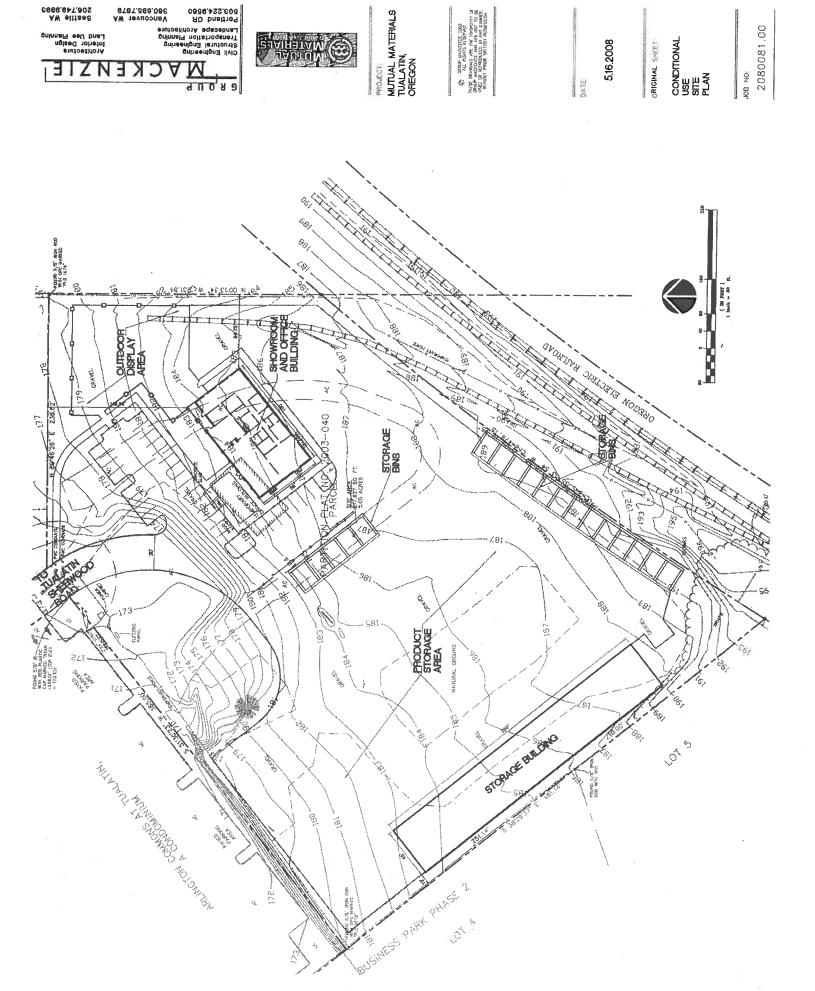


Exhibit ENeighborhood / Developer Meeting Packet











2S122DD00400 Anthro Corporation 10450 SW Manhasset Dr. Tualatin, OR 97062

2S122DD00100 BT Property LLC PO Box 28606 Atlanta, GA 30358

2S127AA01800 Black Lab Investments LLC PO Box 3850 Tualatin, OR 97062

2S127AA01200 5 Yankee MTN LLC 20460 SW Avery Ct. Tualatin, OR 97062

2S127A000401 Portland General Electric 121 SW Salmon St. Portland, OR 97204

2S126B000114 Classic Woodworking 10385 SW Avery St. Tualatin, OR 97062

2S127AA02000 Lakeside Lumber Inc 10600 SW Tualatin Sherwood Rd. Tualatin, OR 97062

2S122DD00500 1701 NW 14th LLC Portland, OR 97209 2S122DD00700 and 500 Pascuzzi Investment LLC 10250 SW North Dakota Tigard, OR 97223

2S127AA00901 Schwan's Sales Enterprises Inc PO Box 35 Marshall, MN 56258

2S127AA01100 MS Jones Holdings LLC 10655 SW Avery St. Tualatin, OR 97062

2S127A000403 City of Tualatin 18880 SW Martinazzi Ave. Tualatin, OR 97062

2S126B000106 Teton Building LLC PO Box 3750 Tualatin, OR 97062

Doug Rux, Community Development Director 18880 SW Martinazzi Ave. Tualatin, OR 97062

2S122DD00500 1603 NW 14th Ave. Portland, OR 97209 2S122DD00600 Huston James H. 2268 SE Mulberry Dr. Milwaukie, OR 97267

2S127AA90000 Arlington Commons At Tualatin 1800 SW First Ave, Suite 100 Portland, OR 97201

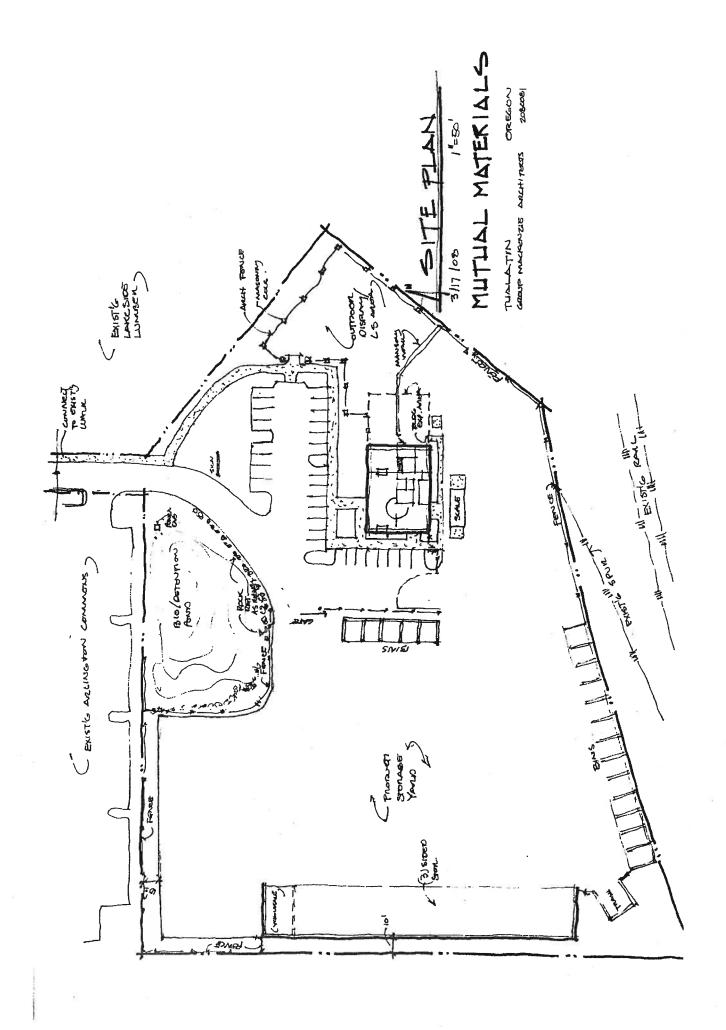
2S127AA0100 HG Holdings Inc PO Box 2090 Tualatin, OR 97062

2S127A000400 ORE-CAL Coca-Cola Bottling CO 1334 South Central Ave. Los Angeles, CA 90021

2S127AA00700 Gehring Limited Partnership 13215 SW Ash Dr. Tigard, OR 97223

2S126B000105 Air Liquide America LTD PTSHP PO Box 460149 Houston, TX 77056

Kaaren Hofman, City Engineer 18880 SW Martinazzi Ave. Tualatin, OR 97062



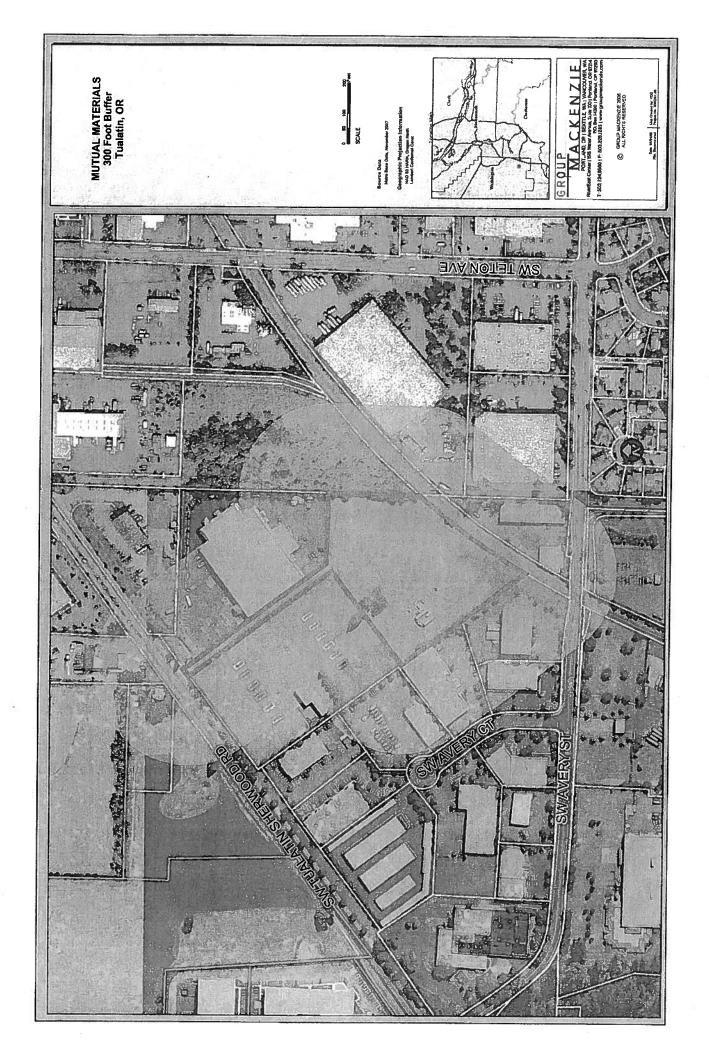


Exhibit FProperty Title

This exhibit is available for viewing in the Community Development Department upon request.

ATTACHMENT E

CUP-08-02: BACKGROUND

This section summarizes pertinent background information from the submitted application for CUP-08-02 and other supporting documents.

The applicant is Kendall Anderegg of Mutual Materials and the consulting land use planner is Theresa Paulson of Group Mackenzie. The subject property of approximately 5.0 acres is a flag lot located at 10700 SW Tualatin-Sherwood Road and is Tax Lot 2S 1 27AA 2100 in an MG Planning District.

The property is undeveloped. Because the property is adjacent to and has a spur from the Portland & Western (P&W) rail line, TriMet through its contractor Stacy and Witbeck, Inc. temporarily uses it to store and deliver rail ties for construction of Washington County Commuter Rail known as the Westside Express Service (WES). Vicinity and tax maps and the site plan are included respectively as Attachments A, B, and C. The application materials including a preliminary site plan are included as Attachment D. The applicant submitted an application for architectural review (AR-08-13) premised upon approval of CUP-08-02.

Exhibit D of the CUP application (Attachment C) presents a preliminary site plan showing improvements including a 6,500 s.f. distribution center with accessory office and showroom space, a partially-enclosed storage shed of 11,700 s.f., outdoor storage areas, an outdoor display area, 31 parking spaces, and a stormwater detention pond incorporating the two trees on site. Review of AR-08-13 will require further information.

ATTACHMENT F

CUP-08-02: ANALYSIS AND FINDINGS

In order to grant the proposed conditional use permit (CUP), the request must meet the approval criteria of Tualatin Development Code (TDC) Section 32.030. The applicant prepared a narrative that addresses the criteria (Attachment D), and staff has reviewed this and other application materials and included pertinent excerpts below:

1. The use is listed as a conditional use in the underlying planning district.

The subject property, Tax Lot 2S 1 27AA 2100, is within a General Manufacturing (MG) Planning District as defined in TDC Chapter 61. "Building materials and supplies, wholesale sales, and warehousing," is a conditional use per TDC Section 61.030(1)(b), which incorporates by reference the conditional uses listed in TDC 60.040(1)(b). "Home Improvement materials and supplies retail sale" is a conditional use per TDC Section 61.030(1), which incorporates by reference the conditional uses listed in TDC 60.040(1)(q). The criterion is met.

2. The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements and natural features.

Size:

The minimum lot size within an MG Planning District is 20,000 square feet (s.f.), approximately 0.46 acres. The subject property is approximately 5.0 acres and exceeds the minimum lot size requirement. The applicant proposes one main building of 6,500 s.f., a partially enclosed outdoor storage shed of 11,700 s.f., and related site improvements. Together the two buildings equate to approximately 8.4% lot coverage. The site size is suitable for the proposed use.

Shape:

The subject property is a flag lot created as Lot 3 through partition application PAR-02-03 with access from SW Tualatin-Sherwood Road. The lot shape is suitable for the proposed use.

Location:

The proposed use is located within an MG Planning District with access from SW Tualatin-Sherwood Road, a major arterial (Eb&t) as illustrated in TDC Figure 11-1 and described in TDC Table 11-1. The site has a rail spur from the Portland & Western (P&W) rail line. Metro had designated the larger area as an industrial "design type," one of the general categories of urban form and function that is part of the 2040 Growth Concept and specified in Metro Code 3.07.130. The location is suitable.

Topography:

As shown in Exhibit E of the application, the site has minor downward slope from southeast to northwest, which does not interfere with the proposed use.

Attachment F Analysis and Findings

Improvements:

The site plan (Exhibit D) shows improvements including a 6,500 s.f. distribution center with accessory office and showroom space, a partially-enclosed storage shed of 11,700 s.f., outdoor storage areas, an outdoor display area, 31 parking spaces, and a stormwater detention pond. The site can accommodate these improvements.

Natural Features:

The only natural features are two existing trees as shown in recent satellite imagery. The detention pond is sited such that they would be preserved and stand at the higher-elevation south/southwest edge of the pond. The proposed use will accommodate the natural features of the site.

Criterion 2 is met.

3. The proposed development is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use.

Transportation: The site is a flag lot on the south side and accessing SW Tualatin-Sherwood Road, between SW Avery Street/112th Avenue and SW Teton Avenue.

SW Tualatin-Sherwood Road is a Washington County facility designated by the City of Tualatin as a Major Arterial (Eb&t), which would ultimately have a right-of-way width of 98 to 102 feet that includes four travel lanes, a center turn lane, bike lanes, planter strips, and sidewalks. SW Tualatin-Sherwood Road is currently approximately 94 feet wide (49 feet on this development's side) with two 12-foot travel lanes, one center turn lane, 6-foot bike lanes, 6-foot planter strips, and 6-foot sidewalks.

The submitted application included a traffic study that showed adequate capacity (LOS C/D for AM/PM Peaks, respectively) at the intersection of SW 112th Avenue/SW Avery Street/SW Tualatin-Sherwood Road in Post-Development situations of Manufacturing, Retail, or Mutual Materials.

Water, Sanitary, & Storm: Connections to City systems currently exist.

Based on staff review and analysis of the application, the existing and approved public facilities for the site are adequate for the proposed use and the development is timely.

Criterion 3 is met.

4. The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying planning district.

The subject property is in the MG Planning District. Surrounding land uses include:

N: MG Arlington Commons industrial condominiums

MG Lakeside Lumber, Inc.

E: MG undeveloped lot (owned by Air Liquide America, LP to north)

S: ML Gearhing Property multi-tenant industrial building (across the rail line)

ML Teton Building, LLC / Fashion Craft Furniture / Manufacturing, Inc. (across the rail line)

W: MG MS Jones Holdings, LLC / HG Holdings, Inc.

There are residences within an RL Planning District within 400 feet of the southwest corner of the subject property. This portion of the Miller Forest subdivision is located southeast across both the rail line and the Gearhing Property, south of SW Avery Street, and east of SW 105th Avenue. They are visible on the vicinity map (Attachment A).

Because the surrounding uses are manufacturing and because the residences are separated by a lot with a less intense industrial use allowed within the ML Planning District and three rights-of-way, the proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying planning district.

Criterion 4 is met.

5. The proposal is consistent with plan policies.

The applicable Tualatin Community Plan policies are in TDC Section 7.040(3) Manufacturing Planning District Objectives – General Manufacturing. Other TDC Sections that are not part of the Community Plan yet are relevant include 32.030 Conditional Uses – Siting Criteria and 61.010 General Manufacturing Planning District – Purpose.

General Manufacturing Planning District (MG)

7.040(3)(a) Suitable for light manufacturing uses and also for a wide range of heavier manufacturing and processing activities. Such areas could be expected to be more unsightly and to have more adverse environmental effects. Rail access and screened open storage would be allowed in this area, conforming to defined architectural, landscape and environmental design standards. Also suitable is the retail sale of products manufactured, assembled, packaged or wholesaled on the site provided the retail sale area, including the showroom area, is no more than 5% of the gross floor area of the building not to exceed 1,500

square feet. Also suitable for the retail sale of home improvement materials and supplies provided it is not greater than 60,000 square feet of gross floor area per building or business and subject to the Special Commercial Setback from arterial streets as generally illustrated in Map 9-5 and specifically set forth in TDC 61.035. Please refer below to staff analysis related to the requirement of 61.010.

7.040(3)(b) The following uses within the General Manufacturing District shall comply with the following size limits established by Metro. Retail sale, retail service and professional service uses shall be no greater than 5,000 square feet of sales or service area per outlet, or not greater than 20,000 square feet of sales or service area for multiple outlets in a single building or in multiple buildings that are part of the same development project, with the following exceptions.

(i) Application of the Industrial Business Park Overlay District (TDC Chapter 69).

(ii) The retail sale of products manufactured, assembled, packaged or wholesaled on the site provided the retail sale area, including the showroom area, shall be no more than 5% of the gross floor area of the building not to exceed 1,500 square feet.

The proposed uses are not within the Industrial Business Park Overlay District (IBPOD). For 7.040(3)(b)(ii), please refer below to staff analysis related to the requirement of 61.010.

61.010 [General Manufacturing Planning District] Purpose.

The purpose of this district is to provide areas of the City that are suitable for light industrial uses and also for a wide range of heavier manufacturing and processing activities. These uses are expected to be more unsightly and have more adverse environmental effects than the uses allowed in the Light Manufacturing Planning District. Railroad access and screened outdoor storage will be allowed in this district, conforming to defined architectural, landscape, and environmental design standards. The heaviest industrial uses that are environmentally adverse or pose a hazard to life and safety shall be prohibited. The purpose is also to allow the retail sale of products manufactured, assembled, packaged or wholesaled on the site provided the retail sale area, including the showroom area, is no more than 5% of the gross floor area of the building not to exceed 1,500 square feet. Also suitable for the retail sale of building and home improvement materials and supplies provided it is not greater than 60,000 square feet of gross floor area per building or business and subject to the Special Commercial Setback from arterial streets as generally illustrated in Map 9-5 and specifically set forth in TDC 61.035.

The proposed light industrial uses are expected to be regarded commonly as unsightly in the absence of landscaping and screening, abut a rail line, and include screened outdoor storage. The main building, the partially enclosed outdoor storage area, and the combined s.f. each does not exceed 60,000 s.f. in area. The proposal is in keeping with the purpose of the MG Planning District.

The applicant explains in Section II "Introduction" on page 3 of the narrative dated 5/16/2008 that, "If approval of the requested conditional use is granted, it is the intent of the contract purchaser to then submit for Architectural Review approval ..." The applicant has submitted an architectural review application (AR-08-13) premised upon approval of CUP-08-02. Of sales, 95% will be wholesale and 5% retail, making retail sales a minor use and *de minimis* in impact. In the Introduction on page 2, the applicant explains that because it sells most of its product to building supply retail stores, it does not compete with them through retail sales and expects most retail sales to be of products discontinued by other such retailers.

The following definitions from 31.060 are useful in further elaborating that the proposed use is virtually wholly for wholesale:

<u>building materials and supplies</u>: wholesale sales and warehousing of materials and supplies including, but not limited to, electrical supplies; fencing materials; building insulation; lumber; prefabricated trusses and structural frames; structural metal materials; masonry supplies; ceramic & stone tile and pavers; painting supplies; plumbing supplies; plywood and wood panel materials; roofing; siding; flooring; window materials; door materials; and tools (handheld and table or stand mounted).

home improvement materials and supplies retail sales: retail sale of home improvement materials and supplies including, but not limited to, electrical supplies; fencing materials; floor coverings such as hardwood, linoleum, vinyl, carpet and rugs; garden tractors and lawn mowers; hardware; building insulation; wall coverings, draperies, window shades, and blinds; lawn and garden supplies; lawn mowers; lighting fixtures; lumber; masonry supplies; painting supplies; plumbing supplies and fixtures; plywood and wood panel materials; siding; roofing; window materials; durable household goods (e.g. refrigerators, stoves and washing machines); and tools (handheld and table or stand mounted).

The applicant provided a preliminary site plan as Exhibit D of the application (Attachment C). The application meets 61.010 because the key points of the narrative and the preliminary site plan show the proposed use is virtually wholly for the wholesale of building materials and supplies as defined above, with a *de minimis* portion of the use for home improvement materials and supplies retail sales as defined above.

The proposal satisfies those objectives and policies of the Tualatin Development Code (TDC) that are applicable to the proposed use.

The proposal is consistent with plan policies.

Criterion 5 is met.

Based on the application and the above analysis and findings, the Mutual Materials conditional use permit (CUP) application meets the criteria of TDC 32.030.

MEMORANDUM

DATE:

June 18, 2008

TO:

Colin Cortes

Assistant Planner

FROM:

Tony Doran, EIT

Engineering Associate

SUBJECT:

CUP 08-02 - Mutual Materials - To allow the wholesale, warehousing, and

distribution of building materials with a 6,500 sq. ft building and related site

improvements. (MG Planning District)

10700 SW Tualatin-Sherwood Road

Tax Lot: 2S127AA02100

Colin,

TDC 32.030 (3) The proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use.

Transportation: The site is a flag lot on the south side and accessing SW Tualatin-Sherwood Road, between SW Avery Street/112th Avenue and SW Teton Avenue.

SW Tualatin-Sherwood Road is a Washington County facility designated by the City of Tualatin as a Major Arterial (Eb&t), which would ultimately have a right-of-way width of 98 to 102 feet that includes four travel lanes, a center turn lane, bike lanes, planter strips, and sidewalks. SW Tualatin-Sherwood Road is currently approximately 94 feet wide (49 feet on this development's side) with two 12-foot travel lanes, one center turn lane, 6-foot bike lanes, 6-foot planter strips, and 6-foot sidewalks.

The submitted application included a traffic study that showed adequate capacity (LOS C/D for AM/PM Peaks, respectively) at the intersection of SW 112th Avenue/SW Avery Street/SW Tualatin-Sherwood Road in Post-Development situations of Manufacturing, Retail, or Mutual Materials (AR 08-13.)

Water, Sanitary, & Storm: Connections to City systems currently exist.

Please let me know if you have questions, ext 3035.



MEMORANDUM

CITY OF TUALATIN RECEIVED JUN 1 2 2008 COMMUNITY DEVELOPMENT

DATE:

June 10, 2008

FROM:

David Schweitzer, Clean Water Services

TO:

Colin Cortes, Assistant Planner City of Tualatin

SUBJECT:

Review Comments - CUP 08-02, Mutual Materials ANN 68-07

GENERAL COMMENTS

This Land Use Review by Clean Water Services (District) does not constitute approval of storm or sanitary sewer compliance with the NPDES permit held by the District. The District, prior to issuance of any connection permit, must review and approve final construction plans.

All provisions of the development shall be in accordance with Clean Water Services (CWS) Design and Construction Standards, Resolution and Order No. 07-20 (R&O 07-20), and the Intergovernmental Agreement between the City and CWS.

A Stormwater Connection Permit shall be required, as authorized by CWS, prior to construction of sanitary sewer, storm and surface water systems, and plat approval.

Final construction plans must be reviewed by CWS for conformance with R&O 07-20 and Service Provider Letter for Tax/Map lot 2S1 27AA-02100.

All public sewer easements shall be reflected on the final construction plans.

SANITARY SEWER

- The lot shall be provided with a direct gravity side sewer (service lateral) connection to a public sanitary sewer mainline in accordance with current CWS Design and Construction Standards. The sanitary lateral shall provide service to only one lot and shall be contiguous with public right-of-way or public sewer easement.
- As proposed connection to the existing 8" sanitary stub in the within the private access drive may be permitted.



STORM DRAINAGE AND WATER QUALITY

- The project shall be provided with a gravity service lateral and individual connection to a public storm conveyance.
- A hydraulic and hydrological analysis of the existing storm conveyance system in accordance with R&O 07-20 is required. A downstream conveyance analysis is required in accordance with CWS Design and Construction Standards. The applicant is responsible for mitigating downstream storm conveyance if the existing system does not have the capacity to convey the runoff volume of a 25-year, 24-hour storm event.
- Per R&O 07-20 chapter 4.05 new impervious surfaces shall require treatment of storm flows through a water quality facility. Facilities serving multiple tax lots and/or receiving flows from the public right of way shall be public facilities and designed to CWS standards.
- Private proprietary storm treatment facilities shall meet R&O 07-20 chapters 4.05.3 (a) and 4.05.8. Public (serving more than one tax lot) underground detention facilities shall not be permitted.
- As proposed this tax lot will be served by an on site water quality/quantity facility.

SENSITIVE AREA

Clean Water Services Sensitive Area Pre-Screening Site Assessment No. 08-000990, dated April 11, 2008 has been issued for this site; the proposed activity does not meet the definition of development or the lot was plated after 9/9/95 and no site assessment or Service Provider Letter is required.

EROSION CONTROL

- All CWS erosion control requirements shall be met in accordance with R&O 07-20, per the last amendment of the Sensitive Area Pre-Screening Site Assessment.
- A NPDES 1200-C erosion control permit is required for site development with total ground disturbing activates, including all off-site work, exceeding one acre.

Recording Secretary



STAFF REPORT CITY OF TUALATIN

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Sherilyn Lombos, City Manager

FROM:

Donald A. Hudson, Finance Director

DATE:

July 28, 2008

SUBJECT:

RESOLUTION TO REINSTATE THE INTERGOVERNMENTAL

AGREEMENT FOR TELECOMMUNICATIONS FINANCIAL

REVIEW SERVICES

ISSUE BEFORE THE COUNCIL:

Authorization to sign an intergovernmental agreement (IGA) reinstating the IGA for telecommunications financial review services, which expired on December 31, 2007.

RECOMMENDATION:

Staff recommends adoption of the attached resolution approving the Intergovernmental Agreement.

EXECUTIVE SUMMARY:

In 2002, the Oregon Municipal Audit Review Committee (OMARC) was formed to facilitate the audits of Qwest and Verizon for franchise fee payments. On January 27, 2003, the City Council approved an intergovernmental agreement with other Oregon municipalities for the purpose of hiring a consultant for reviewing and analyzing franchise fees paid by Qwest and Verizon. Fifty-two Qwest and twenty-six Verizon cities throughout Oregon entered into the original IGA in order to act as one when dealing with the telecommunications companies. The Cities of Portland and Hillsboro were assigned as the Joint Lead Agencies. The original term of the IGA was 5 years, or completion of the audits, whichever was earlier and expired on December 31, 2007.

Unfortunately, a number of issues arose during the Verizon audit, including committee member turnover, the consultant went through structural changes and was unavailable for extended periods of time, technical issues regarding Oregon tariffs and how Verizon applied them, and other challenges brought up by Verizon during the process had to be addressed. OMARC feels that the audit is nearing completion and has pressed Maximus (the consultant) and Verizon to bring the audit to a close.

Staff Report: Resolution to Reinstate the IGA for Telecom Financial Review Services July 28, 2008
Page 2 of 2

The audit has looked at a number of areas in Verizon's franchise payments, including:

- Comparison of addresses in Tualatin against the addresses Verizon provided as within the city. Exceptions would indicate possible underpaid franchise fees.
- > Bundled services for which Verizon collected franchise fees but did not remit to cities. That means more franchise fees to the City.
- > A couple of minor items, such as pay phones that were not included in franchise fees and the exclusion of government lines that should have been included.

The Qwest audit took longer to get started than the Verizon audit, but it is also underway. Qwest recently offered a settlement, which OMARC is reviewing to see whether or not it is a fair settlement for the cities.

OUTCOMES OF DECISION:

This action merely allows OMARC to continue to exist in order to complete the audits of Verizon and Qwest.

FINANCIAL IMPLICATIONS:

There is no cost to the City to enter into the agreement to reinstate the original IGA. Costs of the audits were divided amongst the member cities, based upon population. Tualatin's share of \$7,729.92 was paid in 2003. The outcome of the audits may create additional franchise fee revenue to the City.

Attachments:

A. Resolution

B. Intergovernmental Agreement

RESOLUTION NO. 4815-08

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT TO REINSTATE THE INTERGOVERNMENTAL AGREEMENT FOR TELECOMMUNICATIONS FINANCIAL REVIEW SERVICES.

WHEREAS, in 2002, the City of Tualatin ("City") entered into an Intergovernmental Agreement to hire one or more consultants to review and analyze revenues received from incumbent local exchange carriers as compensation for the rights and privileges to operate in the public right-of-way ("Telecommunications Financial Review Services");

WHEREAS, the Telecommunications Financial Review Services have not been completed and the Intergovernmental Agreement has terminated by the passage of time; and

WHEREAS, the City desires to complete the Telecommunications Financial Review Services under the terms of the Intergovernmental Agreement, and therefore desires to reinstate and amend the term of the Intergovernmental Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF TUALATIN that:

<u>Section 1.</u> The City Manager is authorized to execute the Intergovernmental Agreement, attached hereto as Exhibit A, for the purpose of reinstating and amending the term of the Intergovernmental Agreement for Telecommunications Financial Review Services.

<u>Section 2.</u> This resolution is effective immediately following adoption by the City Council and signature by the Mayor.

المالية 2008 INTRODUCED AND ADOPTED this 28th day ماليالية 2008.

RY

Mavor

APPROVED AS TO LEGAL FORM

ATTEST:

CITY ALTORNEY

City Recorde

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Reinstatement Agreement") is entered into between all of the municipalities (the "Parties") listed in Exhibit A to the Intergovernmental Agreement for Telecommunication Financial Review Services ("Agreement"), effective December 31, 2002 and attached hereto as Attachment 1, for the purpose of reinstating and amending the Agreement.

Recitals

- A. The Parties entered into the Agreement "to hire one or more consultants ("Consultant") to review and analyze revenues received from incumbent local exchange carriers as compensation for the rights and privileges to operate in the public right-of-way ("Telecommunications Financial Review Services");"
- B. The Consultant has been hired and the Telecommunications Financial Review Services have commenced, but have not concluded;
- C. Pursuant to paragraph 12 of the Agreement, which states that "[t]his Agreement shall terminate upon the earlier of five (5) years from the Effective date or until the completion of the Franchise Telecommunications Financial Review," the Agreement terminated on December 31, 2007; and
- D. The Parties desire to complete the Telecommunications Financial Review Services under the terms of the Agreement, and therefore desire to reinstate and amend the term of the Agreement as set forth herein.

The Parties agree to the following:

- 1. The Parties agree to reinstate the Agreement attached hereto as Attachment 1 and incorporated into this Reinstatement Agreement as if fully set forth herein, except as set forth in paragraph 2 below.
- 2. Paragraph 12 of the Agreement shall be amended to state as follows:

"This Agreement shall terminate upon the earlier of January 1, 2010, or the completion or other resolution of the Franchise Telecommunications Financial Review. This Agreement may be terminated earlier upon mutual written consent of the majority of the Parties."

- 3. Upon execution by the Parties, this Reinstatement Agreement shall be effective as of January 1, 2008.
- 4. This Reinstatement Agreement may be executed in any number of counterparts by any one or more of the Parties hereto, and all of these counterparts will be one Reinstatement Agreement. To facilitate execution of this Reinstatement Agreement, the Parties may execute by facsimile transmission the counterparts of the signature pages.

Signature Section for the Reinstatement of the Intergovernmental Agreement for Telecommunication Financial Review Services:

Name:

City of Tualatin, Oregon

By:

Date: July 28, 2008

APPROVED AS TO LEGAL FORM

CITY ATTORNEY

Dem July 28, 2008,



STAFF REPORT CITY OF TUALATIN

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Sherilyn Lombos, City Manager

FROM:

Daniel J. Boss, Operations Director

DATE:

July 28, 2008

SUBJECT:

RESOLUTION DONATING SURPLUS LIBRARY SHELVING AND

FURNISHINGS TO THE BEAVERTON ROTARY FOUNDATION

ISSUE BEFORE THE COUNCIL:

Donation of surplus library shelving and furnishings to the Beaverton Rotary Foundation for the "Rotary Books For Uganda" project.

RECOMMENDATION:

Staff recommends Council adopt the attached resolution donating surplus library shelving and furnishings to the Beaverton Rotary Foundation.

EXECUTIVE SUMMARY:

- The City has surplus shelving and furnishings from the temporary library.
- All surplus shelving and furnishings from the temporary library were offered to other agencies and city departments. The items recommended for donation are what remain unclaimed.
- Some items remain that are no longer needed by the City.
- The City has been approached by the Beaverton Rotary Foundation to donate the remaining shelving and furnishings to them for use in their "Rotary Books For Uganda" project.
- In their request, they state that the materials will be used at the fledgling Gulu University in Uganda's northern region.
- Rotary will remove and ship the shelves and furnishings.
- Tualatin Municipal Code Chapter 1-21-110 (10) Surplus Property allows for surplus property to be donated to 501(c)(3) organizations.
- The Beaverton Rotary is a 501(c)(3) organization, Tax ID #93-0921893
- Past Councils have donated small-value items to these types of organizations.

Staff Report: Donating Surplus Shelving and Furnishings July 28, 2008

Page 2 of 2

FINANCIAL IMPLICATIONS:

Minimal. The estimated value of the shelving and furnishings is a few hundred dollars at State Surplus, but several staff hours would be required to remove and transport the items there. With the cost of fuel and the labor required, it is in the City's best interest to donate the shelving and furnishings.

Attachments: A. Rotary request letter

B. Resolution

C. List of surplus shelving and furnishings



Beaverton Rotary Club PO Box 385 Beaverton, OR 97075

www.beavertonrotary.org

100 SW 195th Ave., #180 Beaverton OR 97006-1958 July 15, 2008

Sherre Calouri President, 2007-2008

Doug Taylor President-elect

John LaPlante Secretary

Dave Buchner Treasurer City of Tualatin Attn: Mr. Clay Reynolds

Dear Mr. Reynolds;

This letter is to request donation by the City of Tualatin of surplus used library shelving from the Tualatin Public Library to the Beaverton Rotary Foundation, a 501©(3) organization. The shelving is needed for shipment to Uganda as part of an ongoing humanitarian assistance project called "Rotary Books For Uganda". Since 2002, that project has collected and shipped to Uganda about half a million used textbooks that had been discarded by schools in the greater Portland area plus used library shelving and other educational materials.

According to the World Bank, Uganda is one of the 25 poorest countries in the world. Education is greatly hampered by lack of adequate funds and a severe book famine. The Books For Uganda Project aims to provide scarce educational resources to Ugandan schools and universities and to help equip libraries. We would like to have the surplus shelving from Tualatin's public library for shipment to the fledgling six-year-old Gulu University in Uganda's northern region. Donation of that shelving by the Tualatin City Council will be greatly appreciated.

Thank you for your assistance.

Sincerely yours,

Joyce M. Lockard, PhD Coordinator, Books For Uganda Project Beaverton Rotary Club

Cc: Doug Taylor

Pres. of Beaverton Rotary Club

RESOLUTION NO.	4816-08
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RESOLUTION DONATING SURPLUS LIBRARY SHELVING AND FURNISHINGS TO THE BEAVERTON ROTARY FOUNDATION

WHEREAS the City of Tualatin has surplus shelving and furnishings from the temporary library that will not be used in the new library and are of no further use by the City; and

WHEREAS surplus shelving and furnishings were offered to other agencies and city departments, but some items remain that need to be removed and disposed of; and

WHEREAS the net value to the City will be minimal if the materials are removed and sent to the State for auction; and

WHEREAS the Beaverton Rotary Foundation, a 501(c)(3) organization, has requested the City donate the remaining shelving and furnishings to them for use in their "Rotary Books For Uganda" project and are willing to come and remove the material: and

WHEREAS the Tualatin Municipal Code, Chapter 1-21, allows for surplus material to be donated to 501(c)(3) organizations.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City of Tualatin deems the library shelving and furnishings listed on Attachment C to be surplus.

Section 2. The City Council donates the items listed on Attachment C to the Beaverton Rotary Foundation, Tax ID # 93-0921893, to be used in the "Rotary Books For Uganda" project.

books for ogailda project.	
INTRODUCED AND ADOPTED this 28th day of July, 2008.	
	CITY OF TUALATIN, OREGON
	BY
APPROVED AS TO LEGAL FORM	Mayor
P. IJA I	ATTEST:
CITY ATTORNEY	BY Danbar
OHIAHONNET	City Recorder

Staff Report: Donating Surplus Shelving and Furnishings July 28, 2008

List of surplus shelving and furnishings:

- 1. Approximately 35 feet of assorted, varied-height wall shelving
- 2. Six double-sided book shelves (6 feet tall by 15 feet long)
- 3. Two computer tables
- 4. Three wooden shelves (8 inches deep by 5 feet long)
- 5. Two old bookdrop boxes
- 6. One globe

Approved By Tuelatin City Council



STAFF REPORT CITY OF TUALATIN

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Sherilyn Lombos, City Manager

FROM:

Doug Rux, Community Development Director

DATE:

July 28, 2008

SUBJECT:

2008 ANNUAL REPORT OF THE TUALATIN DEVELOPMENT

COMMISSION

ISSUE BEFORE THE COUNCIL:

City Council consideration of Oregon Revised Statutes (ORS) 457,460 requirements that an urban renewal agency shall, by August 1 of each year, prepare a statement on the same basis on which financial statements are prepared covering money received and expended for the preceding and current fiscal years.

RECOMMENDATION:

Staff recommends the City Council accept the report.

EXECUTIVE SUMMARY:

- This is not a public hearing.
- ORS 457.460 outlines the requirements for the annual fiscal report. The report must include:
 - The amount of money received during the preceding fiscal year and indebtedness incurred.
 - The purposes and amounts, for which money received, including indebtedness, were expended during the previous fiscal year.
 - Estimate of money to be received in the current fiscal year, including indebtedness.
 - · A budget identifying the purposes and estimated amounts to be received for the current fiscal year and how funds are to be expended.
 - Analysis of impacts, if any, of carrying out the plan for all taxing authorities for the proceeding year.

Staff Report: 2008 TDC Annual Report

July 28, 2008 Page 2 of 2

> A public notice is required to be published that the statement is available for review. The notice is required to be published for a minimum of two times over a two-week period in August.

• There are no criteria applicable to accept the report.

OUTCOMES OF DECISION:

Acceptance of the report will result in the following:

1. Compliance with ORS 457.460.

Not accepting the report will result in the following:

1. Non-compliance with ORS 457.460.

FINANCIAL IMPLICATIONS:

Funds have been budgeted for the current fiscal year to publish the required notice under ORS 457.460(2) in the Economic Development Administration Fund.

PUBLIC INVOLVEMENT:

Public involvement is not required in preparation of this report.

Attachments: A. 2008 Annual Report of the Tualatin Development Commission



2008 ANNUAL REPORT OF THE TUALATIN

DEVELOPMENT COMMISSION

July 28, 2008

2008 ANNUAL REPORT OF THE TUALATIN DEVELOPMENT COMMISSION

July 28, 2008

INTRODUCTION

The City of Tualatin has an urban renewal agency (Tualatin Development Commission) that receives property taxes to pay for projects and programs to improve the Central Urban Renewal District (CURD) and Leveton Tax Increment District (LTID). Oregon Revised Statutes (ORS) 457.460 requires urban renewal agencies to provide a summary of their finances for public information. This report is in addition to the annual Commission budget, which was adopted after a public hearing on June 23, 2008.

Urban renewal agencies can receive property taxes in two ways. First, they are entitled to the amount of property taxes that are imposed on the increase in property values (taxable assessed values) within the urban renewal area since the urban renewal plan for the area was adopted. This process is called the "division of tax" process.

Second, for urban renewal plans that were adopted prior to December 6, 1996, the urban renewal agency may receive funds from a Special Urban Renewal Levy on property within the City of Tualatin. The Tualatin Development Commission can receive taxes from both of these sources.

Division of Tax

The division of tax process results in some property taxes that may have been received by the "taxing districts" that levy property taxes within the urban renewal area (for example, Washington County, School District #23, Port of Portland) being paid over to the Tualatin Development Commission. The taxing districts forego a share of the property tax income during the life of an urban renewal plan so that the urban renewal agency can carry out activities that increase property values in the long-term. Tables 1A and 1B show the taxing districts that levy taxes within the Central Urban Renewal District and Leveton Tax Increment District, the total amount of taxes levied, and the estimated percent of those taxes that were used for Tualatin Development Commission activities in Fiscal Year 07/08.

In FY 02/03 the Oregon Supreme Court issued an opinion concerning urban renewal division of tax. Urban renewal now has a rate to calculate the division of tax. This urban renewal rate has caused other taxing authorities' rates to be adjusted to a new "effective rate" which also includes the urban renewal rate. This new effective rate for all taxing authorities now applies to assessed value above the frozen base

Tualatin Development Commission 2008 Annual Report July 28, 2008 Page 2

amount (assessed value of the urban renewal area before formation of the urban renewal district) within an urban renewal district. Previously, taxing authorities could not share in urban renewal assessed value above the frozen base. The effect of this method of calculating division of tax is a larger base for taxing authorities called a "shared area" value to collect their revenues. Tables 1A and 1B provide the baseline percentage of taxes divided for urban renewal before the "effective rate" calculation.

The tax revenue forgone by the City from the urban renewal program for FY 07/08 is estimated at \$395,000 for the Central Urban Renewal District and \$522,850 for the Leveton Tax Increment District.

FISCAL YEAR 07/08

Central Urban Renewal Bond Fund

In FY 07/08, the Tualatin Development Commission had a Central Urban Renewal Bond Fund Revenue Beginning Balance of \$603,775, received \$2,188,203 from the division of taxes and \$81,816 in Interest and Other Revenue. No Special Urban Renewal Levy has been levied. Revenues are estimates and are not audited.

The Commission used Central Urban Renewal Bond Funds received from the division of taxes and the beginning balance to make payments on debt for financing urban renewal projects or to reserve funds for future debt payments. The Commission expended \$5,495 for Materials and Services, \$279,179 in Debt Service and deposited \$387,293 into Reserves in the Central Urban Renewal District Bond Fund. The Commission also borrowed money by selling du jour bonds (short-term bonds) to be repaid with the annual division of taxes it receives. In FY 07/08 the Commission received \$2,130,000 by issuing du jour bond debt in the Central Urban Renewal District. Bond Fund expenditures are estimates and are not audited.

Central Urban Renewal Project Fund

The Commission's Central Urban Renewal Project Fund had a Beginning Balance (\$6,108,092), Other Revenue (\$245,426) and Sale of Bonds, excluding interest, (\$2,130,000). Funds were expended on Materials & Services (\$21,310), Transfers to Administration/Library Funds (\$4,788,000), Capital Outlay (\$697,300) and Contingency/Reserves (\$2,935,475). Project Fund revenues and expenditures are estimates and are not audited.

Projects funded by the Central Urban Renewal Project Fund Capital Outlay include the following for FY 07/08:

Tualatin Development Commission 2008 Annual Report July 28, 2008 Page 3

Boones Ferry Road Downtown Enhancement Project: (CURD)

Project was initially proposed in the Central Urban Renewal District Plan. It consisted of design and construction of utility under-grounding, roadway widening, sidewalks, pedestrian amenities, and traffic signal poles. This project will increase transportation capacity while enhancing pedestrian opportunities and streetscape aesthetics. On-going activities include environmental remediation at a former gas station site located at SW Nyberg Street and SW Boones Ferry Road. Activities this year included installation of ground monitoring wells.

<u>Timeline</u>: Began FY 01/02, On-going FY 08/09

Funding 07/08: \$50,000

Estimated 07/08: \$50,000





East Commons Enhancements: (CURD)

Project included construction of storm line associated with the Tualatin Library Project and establishing a project scope for improvements to SW Martinazzi Avenue between SW Tualatin-Sherwood Road and SW Boones Ferry Road, SW Nyberg Street between SW Tualatin-Sherwood Road and SW Nyberg Street "Y" and The Lake of The Commons and SW Seneca Street from SW Martinazzi Avenue to The Lake of The Commons. Design concepts include pedestrian sidewalks, street lighting, street trees and curb bump-outs. This project was identified to enhance pedestrian opportunities and streetscape aesthetics consistent with the Tualatin Commons Enhancement Strategy. Improvements will be similar to those constructed for the West Commons project in FY 06/07.

Timeline: Began in FY 07/08: To be completed in FY 09/10

Funding 07/08: \$50,000

Estimated 07/08: \$58,000



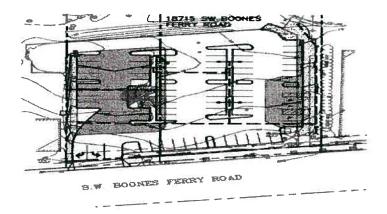
Green Lot Expansion: (CURD)

The purpose of this project is to expand and make improvements to the Green Lot, a public parking facility along SW Boones Ferry Road between SW Martinazzi Avenue and SW Tualatin Road. The project expanded the Green Lot providing additional parking spaces and improved public access through grading, paving, sidewalk construction, landscaping, and site lighting.

Timeline: Began FY 04/05, Completed June 2008

Funding 06/07: \$270,000

Estimated 07/08: \$260,000



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<u>Library Expansion/Remodel</u>: (CURD)

The Tualatin Library more than doubled in size and offers more programs, books and parking. The children and teen areas will be expanded with room for additional books, computer, CD books, music and movies. A Community Room will house programs, a Homework Center and community meetings. Central Urban Renewal District contributed approximately \$4.77 million to this project.

<u>Timeline</u>: Began FY 06/07, Completed July 2008

Funding 07/08: \$4,570,000

Estimated 07/08: \$4,570,000



Commuter Rail: (CURD)

Design and construction of an enhanced Commuter Rail Station located on the west side of Boones Ferry Road between SW Tualatin-Sherwood Road and SW Tualatin Road.

<u>Timeline</u>: Began FY 02/03, to be completed in August 2008

Funding 07/08: \$380,000

Estimated 07/08: \$300,000



Leveton Tax Increment Bond Fund

For FY 07/08 in the Leveton Tax Increment District Bond Fund, the Beginning Balance was \$1,353,908, received \$3,107,372 from the division of taxes and \$131,980 of Interest and Other Revenue. No Special Urban Renewal Levy has been levied. Revenues are estimates and are not audited.

The Commission expended revenues of \$7,395 for Materials and Services, \$870,275 in Debt Service and deposited \$1,031,097 into Reserves. The Commission also borrowed money by selling du jour bonds (short-term bonds) to be repaid with the annual division of tax funds it receives. The Commission received \$2,568,554 by issuing du jour bond debt in the Leveton Tax Increment District Bond Fund. Expenditures are estimates and are not audited.

Leveton Tax Increment Project Fund

The Commission's Leveton Project Fund had a Beginning Balance (\$10,680,63), Other Revenue (\$514,600) and Sale of Bonds (\$2,568,554). Funds were expended on Materials & Services (\$30,223), Transfers to Administration (\$220,000), Capital Outlay (\$1,836,000) and Contingency/Reserves (\$11,722,908). Project Fund revenues and expenditures are estimates and are not audited.

Projects funded by the Leveton Tax Increment Project Fund Capital Outlay include the following for FY 07/08:

SW 124th Avenue/Highway 99W Widening: (LTID)

Widening of SW 124th Avenue northbound between SW Tualatin Road and Highway 99W. This project is needed to provide additional capacity and a turn lane between SW Tualatin Road and 99W.

<u>Timeline</u>: Began FY 03/04, Completed FY 07/08

Funding 07/08: \$0

Estimated 07/08: \$70,000



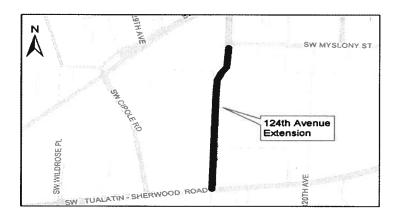
SW 124th Avenue –SW Myslony Street to SW Tualatin-Sherwood Road: (LTID)

Design, right-of-way acquisition and construction of SW 124th Avenue (5-lane arterial) between SW Myslony Street and SW Tualatin-Sherwood Road.

<u>Timeline</u>: Began FY 04/05 and anticipated completion FY 08/09

Funding 07/08: \$4,550,000

Estimated 07/08: \$800,000



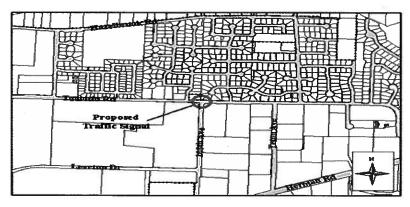
SW 108th Avenue/ SW Tualatin Road Traffic Signal: (LTID)

Design, right-of-way acquisition and construction of a new traffic signal at SW 108th Avenue at SW Tualatin Road to address traffic capacity issues from private development in the Leveton District. The City Council placed this project on hold in May 2008.

<u>Timeline</u>: Began FY 03/04, a completion is undetermined

Funding 07/08: \$500,0000

Estimated 07/08: \$22,000



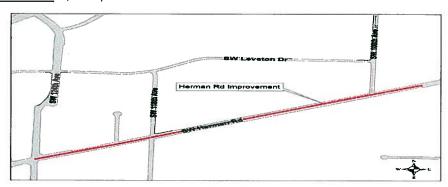
SW Herman Road - SW Teton to SW 124th Avenue: (LTID)

Design, right-of-way acquisition and construction of SW Herman Road to a 3-lane cross-section. Includes a traffic light at SW 118th Avenue and SW Herman Road. The Road Operating Utility Fee Fund will pay for design and construction work between the traffic signal at SW 108th Avenue east to the east edge of the City Operations yard. The Road SDC Fund will cover costs for a new traffic signal at SW Teton and SW Herman Road.

Timeline: Began FY 06/07 and anticipated completion FY 08/09

Funding 07/08: \$3,250,000

Estimated 07/08: \$740,000



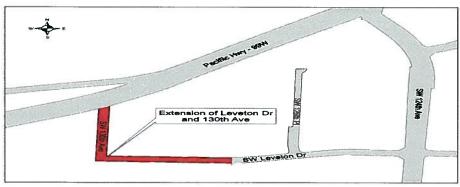
SW Leveton Drive – SW 128th Avenue/SW 130th to 99W: (LTID)

Design, right-of-way acquisition and construction of SW Leveton Drive from SW 128th Avenue to SW 130th Avenue, SW 130th Avenue to 99W.

<u>Timeline</u>: Began FY 07/08, anticipated completion FY 09/10

Funding 07/08: \$800,000

Estimated 07/08: \$115,000



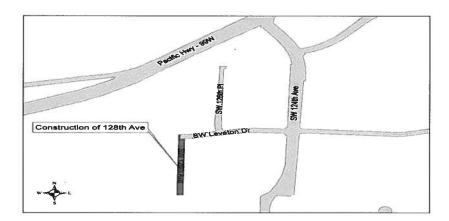
SW 128th Avenue – SW Leveton Drive to SW Cummins Drive: (LTID)

Design, right-of-way acquisition and construction of SW 128th Avenue between SW Leveton Drive and SW Cummins Drive.

<u>Timeline</u>: Began FY 07/08, anticipated completion FY 09/10

Funding 07/08: \$500,000

Estimated 07/08: \$89,000



FISCAL YEAR 08/09

Central Urban Renewal Bond Fund

For Fiscal Year 08/09 the Tualatin Development Commission expects to have a Central Urban Renewal Bond Fund Beginning Balance of \$317,293, receive \$2,231,402 from the division of taxes and \$13,905 in Interest and Other Revenue. No Special Urban Renewal levy has been levied.

The funds received from property taxes will be used to make payments on debt for financing urban renewal projects or to keep in a reserve fund for future debt payments. The Commission will expend \$7,200 for Materials and Services, \$278,665 for Debt Service and deposit \$273,032 into Reserves in the Central Urban Renewal District Bond Fund. The Tualatin Development Commission also expects to receive funds from borrowing money through a du jour bond (short-term bond) to be repaid with the annual division of tax funds. This fiscal year the Commission expects to receive \$2,003,703 by issuing du jour bond debt in the Central Urban Renewal District.

Central Urban Renewal Project Fund

The Commission's Central Project Fund revenue budget includes Beginning Balance (\$3,026,775), Other Revenue (\$94,737), Sale of Bonds (\$2,003,703) and Other Financing (\$0). Funds will be expended on Materials & Services (\$181,562), Transfers to Administration (\$255,000), Capital Outlay (\$4,141,670) and Contingency/Reserves (\$546,983).

Projects funded by the Central Urban Renewal Project Fund Capital Outlay include the following examples for FY 08/09:

Boones Ferry Road Phase 1: (CURD)

Environmental monitoring and testing of the former Hanegan property as part of the land acquisition from the Boones Ferry Road Phase 1 project.

<u>Timeline</u>: Began FY 07/08 and anticipated completion 09/10

Funding 08/09: \$50,000



Commuter Rail: (CURD)

Construction of an enhanced Commuter Rail Station located on the west side of Boones Ferry Road between SW Tualatin-Sherwood Road and SW Tualatin Road.

Timeline: Began FY 02/03, to be completed in August 2008

Funding 08/09: \$171,670

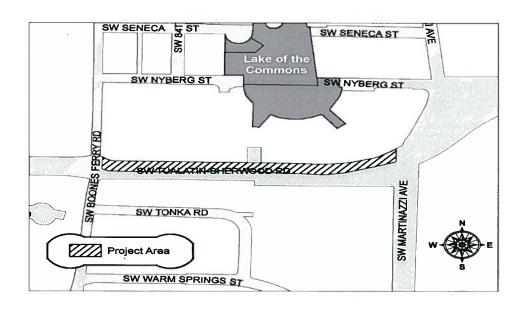


<u>Tualatin-Sherwood Road Landscape and Pedestrian Enhancement</u>: (CURD)

Design and construction of landscape and pedestrian enhancement on SW Tualatin-Sherwood Road between SW Martinazzi Avenue and SW Boones Ferry Road. The project includes a water feature at the SW Nyberg Street/SW Tualatin-Sherwood Road "Y".

<u>Timeline</u>: Began FY 08/09, anticipated completion FY 09/10

Funding 08/09: \$1,800,000



Tualatin Commons East: (CURD)

Design concepts include pedestrian sidewalks, street lighting, street trees and curb bump-outs. This project was identified to enhance pedestrian opportunities and streetscape aesthetics consistent with the Tualatin Commons Enhancement Strategy. Improvements will be similar to those constructed for the West Commons project.

<u>Timeline</u>: Began in FY 07/08; To be completed in FY 09/10

Funding 08/09: \$2,100,000



Leveton Tax Increment Bond Fund

For FY 08/09 the Leveton Bond Fund budget includes a Beginning Balance of \$1,031,097, \$3,509,670 from the division of taxes and Interest/Other Revenue of \$40,188. No Special Urban Renewal Levy has been levied.

The Agency will expend \$9,000 for Materials and Services, \$753,760 for Debt Service and deposit \$1,018,196 into Reserves in the Leveton Tax Increment District Bond Fund. The Commission also expects to receive funds from borrowing money through du jour bonds (short-term bond) to be repaid with the annual division of tax funds. This fiscal year the Commission expects to receive \$2,800,000 by issuing du jour bond debt in the Leveton Tax Increment District.

Leveton Tax Increment Project Fund

The Leveton Project Fund's revenue budget includes Beginning Balance (\$11,722,908), Other Revenue (\$374,952) and Sale of Bonds (\$2,800,000). Funds will be expended on Materials & Services (\$248,230), Transfers to Administration (\$245,000), Capital Outlay (\$13,810,000) and Contingency/Reserves (\$529,980).

Projects funded by the Leveton Tax Increment Project Fund Capital Outlay include the following for FY 08/09:

SW 124th Avenue –SW Myslony Street to SW Tualatin-Sherwood Road: (LTID)

Construction of SW 124th Avenue (5-lane arterial) between SW Myslony Street and SW Tualatin-Sherwood Road.

Timeline: Began FY 04/05 and anticipated completion FY 08/09

Funding 08/09: \$3,800,000

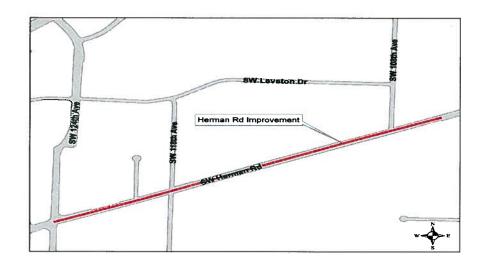


SW Herman Road – SW Teton to SW 124th Avenue: (LTID)

Finalize design and begin construction of SW Herman Road to a 3-lane crosssection. Includes a traffic light at SW 118th Avenue and SW Herman Road. The Road Operating Utility Fee Fund will pay for work between the traffic signal at SW 108th Avenue east to the east edge of the City Operations yard. The Road SDC fund will cover costs for a new traffic signal at SW Teton and SW Herman Road.

<u>Timeline</u>: Began FY 06/07, anticipated completion FY 09/10

Funding 08/09: \$5,560,000

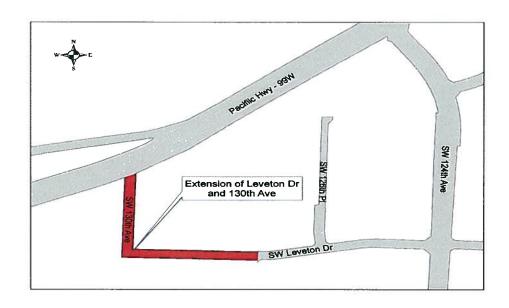


SW Leveton Drive - SW 128th Avenue/SW 130th to 99W: (LTID)

Design, right-of-way acquisition and construction of SW Leveton Drive from SW 128th Avenue to SW 130th Avenue, SW 130th Avenue to 99W.

<u>Timeline</u>: Began FY 07/08, anticipated completion FY 09/10

Funding 08/09: \$2,350,000

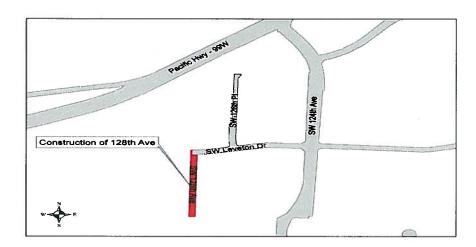


SW 128th Avenue – SW Leveton Drive to SW Cummins Drive: (LTID)

Design, right-of-way acquisition and construction of SW 128th Avenue between SW Leveton Drive and SW Cummins Drive.

<u>Timeline</u>: Began FY 07/08, anticipated completion FY 09/10

Funding 08/09: \$1,300,000



SW Cummins Drive: (LTID)

Design and right-of-way acquisition of SW Cummins Drive between SW 128th Avenue and the western District boundary.

Timeline: Began FY 08/09, anticipated completion FY 10/11

Funding 08/09: \$500,000

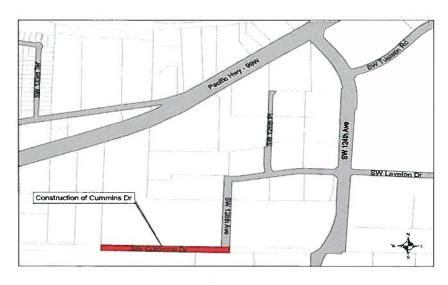


Table 2 is a summary comparison of FY 07/08 revenue and expenditure estimates and FY 08/09 budgeted numbers.

Attachments:

Tables 1A & 1B

Table 2

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TABLE 1A

CENTRAL U	CENTRAL URBAN RENEWAL DISTRICT	AL DISTRICT									
Taxing District	Total Assessed Value	Permanent Rate Rate Based or Previous Local Option Year Biling Rate Rate	Rate Based Local Option Rate	Unlimited (Bond) Rate	Total Rate	FY 07/08 FY 97/98 Base Incremental AV		Change From FY 97/98	Impact on Taxes Extended	Taxes Levied on Total AV	Percent of Taxes Divided for UR
City of Tualatin	\$ 2,541,924,902	2.2665	0	0.1484	2.4149	\$174,278,862	\$88,743,730	\$85,535,132	\$206,559	\$6,138,494	6.86%
Washington County	\$ 41,148,919,981	2.2484	0	0.1947	2.4431	\$174,278,862	\$88,743,730	\$85,535,132	\$208,971	\$100,530,926	0.42%
Port of Portland	\$ 41,148,919,981	0.0701	0	0	0.0701	\$174,278,862	\$88,743,730	\$85,535,132	\$5,996	\$2,884,539	0.42%
Tualatin Valley Fire & Rescue	\$ 29,551,188,810	1.5252	0	0.0308	1.556	\$174,278,862	\$88,659,283	\$85,619,579	\$133,224	\$45,981,650	0.59%
Metro Service District	\$ 36,357,979,130	0.0966	0	0.1717	0.2683	\$174,278,862	\$88,743,730	\$85,535,132	\$22,949	\$9,754,846	0.48%
Tri-Met	\$ 38,507,023,730	0	0	0.0856	0.0856	\$174,278,862	\$88,743,730	\$85,535,132	\$7,322	\$3,296,201	0.45%
School District #23J	\$ 7,253,084,954	4.9892	0	0.778	5.7672	\$174,278,862	\$88,743,730	\$85,535,132	\$493,298	\$41,829,992	2.40%
Northwest Region ESD	\$ 40,661,138,577	0.1538	0	0	0.1538	\$174,278,862	\$88,743,730	\$85,535,132	\$13,155	\$6,253,683	0.43%
Portland Community College	\$ 41,148,919,981	0.2828	0	0	0.2828	\$174,278,862	\$88,743,730	\$85,535,132	\$24,189	\$11,636,915	0.42%
07/08 Annual Re	07/08 Annual Report Spread Sheet										

TABLE 2

CENTRAL URBAN RENEWAL DISTRICT		FY 08/09	FΥ	7 07/08 Est.
BOND FUND				
Revenue				
Beginning Balance	\$	317,293	\$	603,775
Tax Increment, Current & Prior Years	\$	2,231,402	\$	2,188,203
Special Levy	\$	-	\$	-
Interest/Other Revenue	\$	13,905	\$	81,816
Expenditures	1			
Materials & Services	\$	7,200	\$	5,495
Debt Service	\$	278,665	\$	279,179
Deposit to Reserves	\$	273,032	\$	387,293
Debt Issuance	\$	2,003,703	\$	2,130,000
PROJECT FUND				
Revenues				
Beginning Balance	\$	3,026,775	\$	6,108,092
Other Revenue	\$	94,737	\$	245,426
Sale of Land	\$	-	\$	-
Transfers	\$	_	\$	-
Sale of Bonds	\$	2,003,703	\$	2,130,000
Other Financing	\$	-	\$	-
Expenditures				
Materials & Services	\$	181,562	\$	21,310
Transfers To Admin/Library	\$	255,000	\$	4,788,000
Capital Outlay	\$	4,141,670	\$	697,300
Deposit to Contingency & Reserves	\$	546,983	\$	2,935,475
LEVETON TAX INCREMENT DISTRICT	+			
BOND FUND				
Revenue	+			
Beginning Balance	\$	1,031,097	\$	1,353,908
Tax Increment, Current & Prior Years	\$	3,509,670	\$	3,107,372
Special Levy	\$	-	\$	
Interest/Other Revenue	\$	40,188	\$	131,980
Expenditures	Ť	,	· -	
Materials & Services	\$	9,000	\$	7,395
Debt Service	\$	753,760	\$	870,275
Deposit to Reserves	\$	1,018,196	\$	1,031,097
Debt Issuance	\$	2,800,000	\$	2,568,554
PROJECT FUND	+-	-,-3-,-3-	1	
Revenues	+		 	
Beginning Balance	\$	11,722,908	\$	10,680,663
Other Revenue	\$	374,952	\$	514,600
Sale of Bonds	\$	280,000	\$	2,568,554
Expenditures	-\ -	200,000	+	2,000,004
Materials & Services	\$	248,230	\$	30,223
Transfers To Admin	\$	245,000	\$	220,000
Capital Outlay	\$	13,810,000	\$	1,836,000
Deposit to Contingency & Reserves	\$	529,980	\$	11,722,908
·	Ψ.	J23,300	Ψ-	11,722,000
Note: Fiscal Year 07/08 figures are not audited	Ц			

July 28, 3



STAFF REPORT CITY OF TUALATIN

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Sherilyn Lombos, City Manager

FROM:

Doug Rux, Community Development Director

Colin Cortes, Assistant Planner

DATE:

July 28, 2008

SUBJECT:

ORDINANCE AMENDING THE HISTORIC LANDMARK

DEMOLITION CRITERIA; AMENDING TDC SECTIONS 68.060(1)

AND (2) AND 68.080. (PTA-08-03)

ISSUE BEFORE THE CITY COUNCIL:

Whether the City Council should approve modifications to the demolition criteria for historic resources clarifying the criteria to be met by specifying that at least one of three criteria is to be met.

RECOMMENDATION:

The Tualatin Planning Advisory Committee (TPAC) voted 4-1 on 5/07/2008, recommending that the City Council approve PTA-08-03 and motioning that additional language be added to the proposed amendment as shown in Attachment A in green.

Staff recommends that the Council recommend that the City Council consider the staff report and attachments and direct staff to prepare an ordinance granting approval of PTA-08-03 based on the draft ordinance in Attachment D.

EXECUTIVE SUMMARY:

- The Council continued this amendment from the 6/09/2008 public hearing to allow further discussion among interested parties.
- This amendment is a legislative public hearing.
- The applicant is the Community Development Director.
- As presently codified, TDC Section 68.060 makes a decision regarding a landmark demolition request an administrative decision. An applicant is precluded from arguing that demolition of a landmark would be for greater public

Staff Report to City Council: PTA-08-03 — Historic Landmark Demolition Criteria July 28, 2008 Page 2

good without first demonstrating a landmark is either no longer historically or architecturally significant.

- The amendment requires an applicant to choose at least one of three criteria lack of historical architectural significance, lack of architectural significance, or a greater public good as the criterion to address to the satisfaction of the Community Development Director in order for him to approve a request. TDC 68.060(2) would continue to compel the Director to consider six major factors when evaluating an applicant's satisfaction of the criterion. (These are part of Attachment A.) Additionally, if an applicant selects only one of the criteria on which to base his application, the Community Development Director will use information in the resource files on the other criteria a part of his evaluation to develop a decision.
- The amendment also formalizes notification of the Tualatin Historical Society (THS) regarding an amendment to the historic preservation ordinance or a request to demolish a landmark.
- The interpretation of the demolition criteria adopted in 1993 was first questioned during City Council review of HIST-05-02, the 2005 application requesting demolition of the Robinson Store at 18810 SW Boones Ferry Road. (Review ended upon the applicant's withdrawal.) As of this writing, the City has never approved a landmark demolition request.
- The Council discussed amendment of the demolition criteria during its 1/14/2008 work session. The Council agreed to direct staff that TDC 68.060(1) be clarified and to revisit at a later date the general spirit and intent of the overall regulation of historic preservation.
- Review of the criteria in TDC 68.060(1) was part of the larger planning effort documented in the Community Vision and Strategic Action Plan of the Tualatin Tomorrow initiative, specifically efforts related to "Natural and Cultural History Preservation."
- The proposed text amendment language is provided in Attachment A.
 Background is included as Attachment B. The plan amendment approval criteria are addressed in the Analysis and Findings section of this report (Attachment C).
- TDC Section 68.040, last amended 4/22/2002, lists 26 historic landmarks. Of these, staff administratively removed one on 6/19/2002 and fire consumed one on 1/03/2008, leaving 24 listed and standing landmarks.
- On 4/15/2008, the Planning Division held an open house (neighborhood/developer meeting) for the owners of the historic landmarks inventoried in TDC Section 68.040.
- The applicable policies and regulations that apply to the proposal include: TDC 1.032 "Amendments," 16.030 "Historic Preservation," and 68.060 "Demolition Criteria." The Analysis and Findings section of this report (Attachment C) considers the applicable policies and regulations.

Staff Report to City Council: PTA-08-03 — Historic Landmark Demolition Criteria July 28, 2008

Page 3

 Before granting the PTA-08-03, the City Council must find that it meets the criteria listed in TDC 1.032 and the objectives of 16.030. The Analysis and Findings section of this report (Attachment C) compares the application with the plan amendment criteria.

- Based on input from THS Vice President Yvonne Addington, TPAC member Paul Sivley suggested new language for Section 68.060(2)(b)(ii) as shown in Attachment C. The TPAC recommended approval of PTA-08-03 with this language included.
- THS President Norm Parker and Loyce Martinazzi met with the City Manager and the Community Development Director on 6/25/2008 to discuss new draft language. The draft language in Attachment A in blue satisfies their recommendation.

OUTCOMES OF DECISION:

Approval of the PTA request would result in the following:

- 1. An applicant satisfying at least one of three criteria to obtain approval to demolish a historic landmark listed in TDC Section 68.040.
- 2. The broadening of landmark demolition request potential review criteria.
- 3. Modification of the onerous criteria for demolition with the resulting possibility that additional resources could be designated at a future date knowing that this is a means to removing historic landmarks from Section 68.040 if desired.
- 4. Formal notification of THS regarding an amendment to the historic preservation ordinance or a request to demolish a landmark.

Denial of the PTA request would result in the following:

- 1. TDC Sections 68.060(1) and (2) and 68.080 remain as they are.
- 2. Questions of TDC interpretation of demolition criteria remain in doubt.
- 3. The City would not adequately address the concerns of THS.

ALTERNATIVES TO RECOMMENDATION:

The alternatives to the TPAC recommendation for the Council are:

- Recommend the Council approve the proposed PTA with changes.
- Recommend the Council deny the request for the proposed PTA.
- Continue the discussion of the proposed PTA and return to the matter at a later date.

FINANCIAL IMPLICATIONS:

Because a City department is the applicant, an application fee is not applicable. Funds have been allocated in the FY 2008/09 budget to prepare City initiated amendments.

PUBLIC INVOLVEMENT:

Staff Report to City Council: PTA-08-03 — Historic Landmark Demolition Criteria July 28, 2008
Page 4

The Planning Division held an open house for owners of historic landmarks and interested parties on 4/15/2008 and mailed notice of such to these parties. Two property owners attended representing the Luster House on SW Sagert Street and the Black House on SW Myslony Street. Two persons who were unable to attend, including a staff member of THS, contacted staff to inquire about the nature of amendment. The Community Development Director discussed the proposed language with THS President Norm Parker on 4/17/2008. At TPAC on 5/07/2008, THS Vice President Yvonne Addington requested that the historic preservation ordinance be strengthened such that it lessens the chance of demolition of the old Tualatin Elementary School at 19945 SW Boones Ferry Road. THS President Norm Parker and Loyce Martinazzi met with the City Manager and the Community Development Director on 6/25/2008 to discuss new draft language. The draft language in Attachment A in blue satisfies their recommendation.

Attachments:

- A. Proposed text amendment language
- B. Background
- C. Analysis and Findings
- D. Draft ordinance
- E. Landmark Inventory Map

ATTACHMENT A

PTA-08-03: PROPOSED TEXT AMENDMENT LANGUAGE

Section 68.060 Demolition Criteria.

- (1) In determining whether a request for demolition of a landmark shall be approved, approved with conditions or denied, the Planning Community Development Director shall make a decision that the landmark is find that at least one of the criteria below has been met:
 - (a) No longer The landmark is no longer historically or architecturally significant; and.
 - (b) The landmark is no longer architecturally significant.
 - (c) The benefits of demolishing the landmark and the construction of the identified conflicting permitted uses(s) or uses outweigh the value to the community of preserving the landmark.
- (2) The following factors shall be used by the <u>Planning-Community Development</u> Director in making a decision on demolitions:
 - (a) The information used in the original designation of the landmark;
 - (b) Any evidence the applicant or property owner has provided demonstrating that there would be no reasonable, long-term economic benefit to the property owner from preservation of the landmark. In making this determination, the owner must show that all uses or adaptive uses of the landmark have been thoroughly examined. For example:
 - (i) The fact that a higher economic return would <u>on its own</u> result from demolition than preservation is insufficient to meet this criterion.
 - (ii) A lack of adequate funds to pursue potential uses or adaptive uses is insufficient to meet the criterion (i.e., selling, partially preserving, or moving the landmark isare an options that shall be considered).
 - (c) Whether issuance of a Certificate of Appropriateness approving the demolition request would act to the detriment of the public welfare;
 - (d) The Economic, Social, Environmental and Energy consequences to the community of demolishing the landmark as compared to pre-serving it; and
 - (e) The physical condition of the land-mark.
 - (f) Whether the landmark is identified as a primary or secondary resource. Additional importance shall be accorded to preserving landmarks with a primary designation.

Section 68.080 Demolition and Relocation Approval Process.

(10) In addition to any other persons entitled to notice, the Community Development

Director or designee shall mail notice of application to demolish a landmark to the
president of the Tualatin Historical Society. Such notice shall begin a comment
period of two weeks.

Rev. 7/15/2008 Attachment A
Proposed Text Amendment Language

Notes:

- 1. Staff recommends the language in red.
- 2. TPAC recommended the proposed language in green in 68.060(2) on May 7, 2008 as part of its motion.
- 3. On June 25, 2008 during a meeting with the City Manager and the Community Development Director, President Norm Parker and Loyce Martinazzi of the Tualatin Historical Society (THS) recommended that there be formal notification of the THS president regarding historic preservation. The proposed language in blue in Section 68.080 satisfies their recommendation.

ATTACHMENT B

PTA-08-03: BACKGROUND

PTA-08-03 is a plan text amendment to Tualatin Development Code (TDC) Sections 68.060(1) and (2) and 68.080 regarding historic landmark demolition criteria.

In 2005, the City Council reviewed HIST-05-02, an application to demolish the Robinson Store at 18810 SW Boones Ferry Road that the applicant later withdrew. The review raised questions about how to interpret the demolition criteria in the TDC. The Council requested that staff revisit the criteria. On 1/14/2008, the Community Development Director presented slides related to clarification of the criteria as well as building maintenance standards, which were of interest to the Council. Historic preservation was among the Council's Strategic Action Plan Goals. The intent of the criteria as originally adopted in 1993 was that to be demolished a landmark needed to be found no longer either architecturally or historically significant, but not both. The Council directed staff to make this more explicit and to involve the Tualatin Historical Society (THS) when the Tualatin Planning Advisory Committee (TPAC) was to review the anticipated PTA. The Council at a later date would review the general spirit and intent of the regulation of historic preservation.

Prior to TPAC, the Community Development Director on 4/15/2008 held an open house for the owners of the historic landmarks listed in TDC Section 68.040 and THS.

On 6/09/2008, the Council continued this matter to the 7/28/2008 public hearing to allow further discussion among interested parties. Staff revised the application after a 6/25/2008 meeting with President Norm Parker and Loyce Martinazzi of THS so that it amends Section 68.080 to codify formal notification of THS of any demolition request. The proposed language of the text amendment is in Attachment A.

ATTACHMENT C

PTA-08-03: ANALYSIS AND FINDINGS

Tualatin Development Code (TDC) Section 1.032 lists the eight criteria for approval of a plan amendment.

Before granting an amendment to the Plan Text or Plan Map of the Tualatin Development Code (TDC), including the Tualatin Community Plan, the Council shall find that:

1. Granting the amendment is in the public interest.

PTA-08-03 furthers the public interest by clarifying a significant policy that establishes the parameters by which to review a request to demolish a historic landmark and also establishes formal notification of the Tualatin Historical Society (THS) regarding such a request.

2. The public interest is best protected by granting the amendment at this time.

Granting the amendment at this time best protects the public interest because it facilitates review by the City Council and because the City presently has no submitted requests to demolish a historic landmark. Additionally, THS has requested that it receive formal notification of a request to demolish a landmark. This process of notification helps protect the public interest by notifying an organization with the vested interest in historic preservation issues in the Tualatin community.

3. The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan.

Tualatin Development Code (TDC) Section 16.030 "Historic Preservation" – a part of the Tualatin Community Plan (TCP) – lists twenty-five (25) objectives of the historic preservation program. The applicable objectives are listed below:

(1) Promote the historic, educational, architectural, cultural, economic, and general welfare of the public through the identification, preservation, restoration, rehabilitation, protection and use of those buildings, structures, sites and objects of historic interest within the City;

While PTA-08-03 broadens slightly the criteria an applicant must meet to obtain approval of the demolition of a historic landmark, the criteria remain substantively similar to those in the existing ordinance. The amendment fulfills a City Council directive to clarity the criteria in order to facilitate the review of future requests. It also serves the Council's consideration of the overall spirit and intent of historic preservation and provides for formal notification of THS. The scope of the amendment is minor compared to that of the overall historic preservation ordinance, which would continue to

promote the historic, educational, architectural, cultural, economic, and general welfare of the public through the identification, preservation, restoration, rehabilitation, protection and use of those buildings, structures, sites and objects of historic interest within the city. The objective is met.

(2) Foster community and neighborhood pride and sense of identity based on recognition and use of historic resources;

The amendment seeks to clarify that portion of the historic preservation ordinance allowing for demolition and to broaden the options of landowners. It thereby facilitates review by the City Council of future demolition requests and allows the Council to balance this and other objectives. The TDC would continue to require an applicant to meet a set of criteria in order to obtain approval to demolish a historic landmark. The objective is met.

(3) Strengthen the economy of the City by encouraging property owners to preserve historic resources for tourists, visitors and residents;

The amendment provides greater latitude to landowners seeking to profit from historic landmarks and facilitates Council review of demolition requests by clarifying the parameters of review, thereby enabling the Council to balance multiple public objectives. The objective is met.

(4) Encourage public awareness, understanding and appreciation of the City's history and culture;

The amendment would leave intact the overall requirement of the ordinance, namely to allow demolition of a designated historic landmark only if an applicant presents sufficient reason. Requests will continue to involve public participation, and staff would formally notify THS of such requests. The objective is met.

(5) Promote the enjoyment and use of historic resources appropriate for the education and recreation of the people of Tualatin;

By broadening the options of owners of historic landmarks, the City and a future applicant can more readily reach consensus on a particular landmark by mitigating or accommodating conflicting uses such that the enjoyment of historic resources may continue. The objective is met.

(6) Identify and preserve diverse architectural styles reflecting periods of the City's historical and architectural development, encourage complementary design and construction for alterations affecting historic resources and encourage relocation of historic resources over demolition;

The amendment would not alter the encouragement to relocate rather than demolish historic resources. Additionally, the ordinance will continue to require applicants to rebut the City's accumulated research that led to the designation of the historic

landmarks listed in TDC Section 68.040 in fulfillment of a major state planning goal. The objective is met.

(7) Enhance property values and increase economic and financial benefits to the City and its inhabitants:

The amendment would broaden options for owners of historic landmarks such that they can more easily conserve landmarks while accommodating economic enterprise. The City benefits from the accommodation of enterprises and the conservation of landmarks. This amendment meets the objective.

(8) Identify and resolve conflicts between the preservation of historic resources and alternative land uses:

The amendment would ease review by the City Council of future demolition requests, particularly by allowing a fuller understanding of each criterion. In both the existing and proposed text of TDC Section 68.060(1), there remains the criterion "that the benefits of demolishing the landmark and the construction of the identified conflicting permitted use(s) outweigh the value to the community of preserving the landmark." This allows public scrutiny and Council review of the level of compliance of individual requests with Objective 8. Additionally, Subsection (2) lists factors that must be considered for any chosen criterion. Lastly, the amendment would codify formal notification of THS. The amendment would help to identify and resolve conflicts between the preservation of historic resources and alternative land uses by clarifying demolition review criteria.

(9) Integrate the management of historic resources into public and private land management and development processes;

The amendment would ease review by the City Council of future demolition requests and would not compromise this objective. The TDC would continue to require an applicant to meet a set of criteria in order to obtain approval to demolish a historic landmark.

(10) Carry out the provisions of Statewide Planning Goal 5;

Oregon Administrative Rules (OAR) 660-015-0000(5) elaborates Oregon Statewide Planning Goal 5 "Natural Resources, Scenic and Historic Areas, and Open Spaces." Goal 5 encourages local governments to evaluate historic resources and maintain current inventories of them; TDC Chapter 68, including the inventory that is Section 68.040, fulfills Goal 5. The proposed text amendment would not interfere with this statewide planning goal.

(11) Prepare a report describing the comprehensive history of the City's past; and

This objective was previously met in the form of the "City of Tualatin Historic Resource Technical Study and Inventory 1992/1993," available upon request for viewing in the Community Development Department, and so is no longer relevant.

(12) Identify and list additional properties to the current list of protected historic resources.

This amendment does not preclude future additions to the historic landmark inventory in TDC Section 68.040.

(13) Upon annexation, potential historic resources located outside of the City, but within the City's planning area shall proceed through the significance review, conflicting use and economic, social, environmental and energy analysis;

This amendment is not relevant to this objective because it is general to all historic properties and not related to any particular annexed property.

(14) Review the impacts on landmarks when public improvement projects are proposed;

In both the existing and proposed text of TDC Section 68.060(1), there remains the criterion "that the benefits of demolishing the landmark and the construction of the identified conflicting permitted use(s) outweigh the value to the community of preserving the landmark." This allows public scrutiny and Council review of a request raised by a public improvement project. Also, TDC 68.060(2) would continue to specify factors to consider when evaluating any chosen criterion.

(15) Retain landmarks in the Low Density Residential (RL) Planning District on parcels which cannot be partitioned or subdivided by preserving and not demolishing or relocating them;

This amendment is not relevant to this objective because it is general to all historic properties and not related to any particular property.

(16) Retain landmarks located on parcels which can be partitioned or subdivided in the Low Density Residential (RL) Planning District by property owners and developers integrating the resource into proposed lot configurations and development proposals;

This amendment is not relevant to this objective because it is general to all historic properties and not related to any particular property.

(20) Encourage adaptive reuse of landmarks in commercial planning districts and discourage relocation and demolition;

The amendment preserves the existence and substantive nature of the criteria established to dissuade property owners from requesting demolition of historic landmarks. The City Council will continue to review future requests for demolition against the criterion "that the benefits of demolishing the landmark and the construction of the identified conflicting permitted use(s) outweigh the value to the community of

preserving the landmark."

4. The factors listed in Section 1.032(4) were consciously considered:

The various characteristics of the areas in the City;

TDC Section 68.040 as amended 4/22/2002 lists 26 historic landmarks throughout the City, of which the Richardson House was administratively removed from the list on 6/19/2002 upon the owner's request and the Nyberg House burned in January 2008. The plan text amendment would apply to these historic landmarks and others yet to be designated, and the amendment does not influence and is not influenced by any particular area(s) of the city.

The suitability of the areas for particular land uses and improvements in the areas:

The plan text amendment is legislative because it is not specific to any property. While properties having historic landmarks are finite in number, the amendment is not related to any specific landowner's development or redevelopment intentions. Because of this, the criterion is not applicable.

Trends in land improvement and development;

As the city develops and redevelops to accommodate its projected resident population, conflicting uses will continue to arise. As a consequence of the 2005 withdrawn request to demolish the Robinson Store in (HIST-05-02), this amendment seeks to clarify that portion of the historic preservation ordinance allowing for demolition and to broaden the options of landowners. The amendment serves to facilitate the future accommodations of conflicting uses and so meets the criterion.

Property values;

The plan text amendment is legislative because it is not specific to any property and will have no material detriment to any particular property, so the criterion is not applicable.

The needs of economic enterprises and the future development of the area;

As the city develops and redevelops to accommodate its projected resident population, conflicting uses will continue to arise as landowners seek to profit from land including through the accommodation of economic enterprises. As a consequence of the 2005 withdrawn request to demolish the Robinson Store in (HIST-05-02), this amendment seeks to clarify that portion of the historic preservation ordinance allowing for demolition and to broaden the options of landowners. The amendment serves to facilitate the future accommodations of conflicting uses and also facilitates the balancing of several public objectives. For example, the request to demolish the Robinson Store necessitated weighing the merits of preserving the landmark and those of widening a

public thoroughfare to improve transportation, and the former outweighed the latter. This amendment will facilitate deliberation on conflicting objectives during future demolition requests. The criterion is met.

Needed right-of-way and access for and to particular sites in the area;

Because the amendment is legislative it is not specific to any property, it does not affect any specific existing or future right-of-way (ROW) or other public access and so the criterion is not applicable.

Natural resources of the City and the protection and conservation of said resources;

Because the amendment is legislative and not specific to any property, it does not hinder specific natural resources within the city or the protection and conservation of any resources themselves. The criterion is not applicable.

Prospective requirements for the development of natural resources in the City;

Because the amendment is legislative and not specific to any property, it does not hinder prospective requirements for the development of natural resources within the city. The criterion is not applicable.

The public need for healthful, safe, aesthetic surroundings and conditions.

While the amendment itself does not affect the provision of healthful, safe, aesthetic surroundings and conditions, it will facilitate public deliberation that will balance City objectives including the provision of healthful, safe, aesthetic surroundings and conditions. The criterion is met.

Proof of change in a neighborhood or area, or a mistake in the Plan Text or Plan Map for the property under consideration are additional relevant factors to consider.

The City does not allege a mistake in the plan text or plan map, and the amendment is not specific to any particular property and so no change in a neighborhood or area is relevant. The criterion is not applicable.

5. The criteria in the Tigard-Tualatin School District Facility Plan for school facility capacity have been considered when evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

Because the amendment will not affect public school capacity, this criterion is not applicable.

6. Granting the amendment is consistent with the applicable State of Oregon Planning Goals and applicable Oregon Administrative Rules.

The PTA must comply with the plan amendment criteria in Section 1.032 of the TDC that incorporates the Tualatin Community Plan (TCP), which reflects Metro Code provisions and has been acknowledged by the Oregon Department of Land Conservation and Development (DLCD) as complying with state planning goals. Therefore, compliance with the TCP by definition includes compliance with state and regional minimum planning requirements, including Oregon Administrative Rules (OAR) 660-015 and 016 about historic resources. OAR 660-015-0000(5) elaborates Oregon Statewide Planning Goal 5 "Natural Resources, Scenic and Historic Areas, and Open Spaces." Goal 5 encourages local governments to evaluate historic resources and maintain current inventories of them; TDC Chapter 68, including Section 68.040, fulfills Goal 5. The proposed text amendment would not interfere with this statewide planning goal.

7. Granting the amendment is consistent with the Metropolitan Service District's Urban Growth Management Functional Plan.

This criterion is not applicable because the March 2008 edition of the Urban Growth Management Functional Plan (UGMFP) effective 4/25/2007, codified as Metro Code Section 3.07, makes no reference to historic preservation.

8. Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City's planning area.

This criterion is not applicable to any particular property or potential site development and maximum possible vehicle traffic during the p.m. peak hour.

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ORDINANCE AMENDING THE HISTORIC LANDMARK DEMOLITION CRITERIA; AND AMENDING TDC 68.060 AND 68.080 (PTA-08-03)

WHEREAS Tualatin Development Code (TDC) 68.060 establishes criteria for the for the demolition of a historic landmark; and

WHEREAS the staff recommends to Council that the TDC be amended to clarify the criteria and formally involve the Tualatin Historical Society (THS); and

WHEREAS the Tualatin Planning Advisory Committee (TPAC) recommends to Council that the TDC be amended to clarify and improve the criteria; and

WHEREAS Council finds the amendment to be appropriate. Therefore,

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TDC Section 68.060 is amended to read as follows:

- (1) In determining whether a request for demolition of a landmark shall be approved or approved with conditions, the Planning Community Development Director shall make a decision that the landmark is find that one of the criteria below has been met:
 - (a) No longer The landmark is no longer historically or architecturally significant.
 - (b) The landmark is no longer architecturally significant.
 - (c) That the benefits of demolishing the landmark and the construction of the identified conflicting permitted uses(s) or uses outweigh the value to the community of preserving the landmark.
- (2) The following factors shall be used by the <u>Planning-Community Development</u> Director in making a decision on demolitions:
 - (a) The information used in the original designation of the landmark;
 - (b) Any evidence the applicant or property owner has provided demonstrating that there would be no reasonable, long-term economic benefit to the property owner from preservation of the landmark. In making this determination, the owner must show that all uses or adaptive uses of the landmark have been thoroughly examined. For example:
 - (i) The fact that a higher economic return <u>on its own</u> would result from demolition than preservation is insufficient to meet this criterion.
 - (ii) A lack of adequate funds to pursue potential uses or adaptive uses is insufficient to meet the criterion (i.e., selling, partially preserving, or moving the landmark is are an options that shall be considered).
 - (c) Whether issuance of a Certificate of Appropriateness approving the demolition request would act to the detriment of the public welfare;



- (d) The Economic, Social, Environmental and Energy consequences to the community of demolishing the landmark as compared to pre-serving it; and
- (e) The physical condition of the landmark.
- (f) Whether the landmark is identified as a primary or secondary resource. Additional importance shall be accorded to preserving landmarks with a primary designation.

Section 2. TDC Section 68.080 is amended to read as follows:

(10) In addition to any other persons entitled to notice, the Community

Development Director or designee shall mail notice of application to

demolish a landmark to the president of the Tualatin Historical Society.

Such notice shall begin a comment period of two weeks.

INTRODUCED AND ADOPTED this 11th day of August, 2008.

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BY		
	Mayor	
ATTEST:		
BY		
-	City Recorder	



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STAFF REPORT CITY OF TUALATIN

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Sherilyn Lombos, City Manager

FROM:

Brenda Braden, City Attorney

DATE:

July 28, 2008

SUBJECT:

AN ORDINANCE RELATING TO FLOODPLAIN MANAGEMENT;

AMENDING FLOODPLAIN DEFINITIONS AND PROVISIONS; AND AMENDING TDC 70.030, 70.130, 70.140, 70.170, AND

70.180 (PTA-08-02).

ISSUE BEFORE THE COUNCIL:

Whether the City Council should amend the Tualatin Development Code (TDC) Chapter 70 – Floodplain District. The proposed amendment would revise and add definitions in TDC 70.030 consistent with current FEMA (Federal Emergency Management Agency) and Flood Insurance Administration (FIA) definitions and amend Administration and Flood Hazard Reduction provisions in TDC 70.130 – 73.190 consistent with FEMA and FIA standards for participation in the National Flood Insurance Program (NFIP).

RECOMMENDATION:

Staff recommends that the City Council approve the ordinance granting PTA-08-02.

EXECUTIVE SUMMARY:

On July 14, 2008, the City Council held a legislative hearing (PTA-08-02) to decide whether to initiate a draft amendment to the Tualatin Development Code (TDC) that would amend Chapter 70 — Floodplain District definitions and provisions to make it consistent with FEMA and FIA standards. At the close of the public hearing, Council approved the Staff Report by a vote of 6-0, and directed Staff to bring back an ordinance adopting PTA-08-02.

FINANCIAL IMPLICATIONS:

The Applicant is the City of Tualatin Engineering Division. No fee is required. Funds have been budgeted in the Planning Division's FY07/08 budget to prepare and process City-initiated amendments.

Staff Report – PTA-08-02 July 28, 2008 Page 2 of 2

Attachments:

A. Ordinance

B. Exhibit A – Affidavit of Publication C. Exhibit B – Affidavit of Posting
D. Exhibit C – Staff Report dated July 14, 2008

Ordinance No. 1265-08

AN ORDINANCE RELATING TO FLOODPLAIN MANAGEMENT; AMENDING FLOODPLAIN DEFINITIONS AND PROVISIONS; AND AMENDING TDC 70.030, 70.130, 70.140, 70.170 AND 70.180 (PTA-08-02).

WHEREAS upon the application of the City of Tualatin Engineering Division, a public hearing was held before the City Council of the City of Tualatin on July 14, 2008, related to floodplain management, amending floodplain definitions and provisions, and amending TDC 70.030, 70.130, 70.140, 70.170 and 70.180 (PTA-08-02); and

WHEREAS notice of public hearing was given as required under the Tualatin Community Plan by publication on June 26, 2008, in The Times, a newspaper of general circulation within the City, which is evidenced by the Affidavit of Publication marked "Exhibit A," attached and incorporated by this reference; and by posting a copy of the notice in two public and conspicuous places within the City, which is evidenced by the Affidavit of Posting marked "Exhibit B," attached and incorporated by this reference; and

WHEREAS the Council conducted a public hearing on July 14, 2008, and heard and considered the testimony and evidence presented by the City staff and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing the Council vote resulted in approval of the application by a vote of 6-0 with Councilor Beikman absent; and

WHEREAS based upon the evidence and testimony heard and considered by the Council and especially the City staff report dated July 14, 2008, the Council makes and adopts as its Findings of Fact the findings and analysis in the staff report attached as "Exhibit C," which are incorporated by this reference; and

WHEREAS based upon the foregoing Findings of Fact, the City Council finds that it is in the best interest of the residents and inhabitants of the City and the public; the public interest will be served by adopting the amendment at this time; and the amendment conforms with the Tualatin Community Plan; and therefore, the Tualatin Development Code should be amended. Therefore.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TDC 70.030 is amended to add new definitions, amend existing definitions, or delete the following definitions in alphabetical order to read as follows:

Section 70.030 Definitions.

<u>Critical Facility</u>. Facilities such as hospitals, fire stations, police stations, storage of critical records and similar facilities.

Ordinance No. <u>1265-08</u> Page 1 of 6

<u>Development</u>. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations *or storage of equipment or mate-rials* located within the area of special flood hazard.

<u>Elevated Building</u>. For insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns.

Existing manufactured home park or subdivision. A manufacturing home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

<u>Expansion to an existing manufactured home park or subdivision.</u> The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

<u>Functionally Water Dependent Use</u>. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Manufactured Home. A structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, recreational vehicles, and other similar vehicles placed on a site for more than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, recreational vehicles, and other similar vehicles placed an a site for 180 consecutive days or fewer.

New manufactured home park or subdivision. A manufacturing home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by a community.

Recreational Vehicle. A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

<u>Substantial Damage</u>. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal to or exceed 50 percent of the market value of the structure before the damage occurred.

Section 2. TDC 70.130 is amended to read as follows:

70.130 Designation of the City Engineer.

The City Engineer is hereby appointed as the Local Floodplain Administrator to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

Section 3. TDC 70.140 is amended to read as follows:

70.140 Duties and Responsibilities of the City Engineer.

Duties of the City Engineer shall include but not be limited to those listed in this Section.

- (1) Permit Review.
- (a) Review all development permits to determine that the permit requirements of this Chapter have been satisfied.
- (b) Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
- (c) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of TDC 70.190(1) are met.
- (2) <u>Use of Other Base Flood Data</u>. When base flood elevation data has not been provided in accordance with TDC 70.050, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the City Engineer shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer TDC 70.180, SPECIFIC STANDARDS, and TDC 70.190 FLOODWAYS.
- (3) Information to Be Obtained and Maintained.
- (a) Where base flood elevation data is provided through the Flood Insurance Study or as required under subsection (2), obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (b) For all new or substantially improved floodproofed structures:
 - (i) Verify and record the actual elevation (in relation to mean sea level); and

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- (ii) Maintain the floodproofing certifications required by TDC 70.120(3).
- (c) Maintain for public inspection all records pertaining to the provisions of this Chapter.
- (4) Alteration of Watercourses.
- (a) Notify adjacent communities and the State coordinating agency (*Department of Land Conservation and Development*) prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (b) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) <u>Interpretation of FIRM Boundaries</u>. Make interpretations when needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in TDC 70.150.

Section 4. TDC 70.170 is amended to read as follows:

70.170 General Standards.

In all areas of special flood hazards, the following standards are required:

- (1) Anchoring.
- (a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (b) All manufactured dwellings must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques.)
- (2) Construction Materials and Methods.
- (a) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (c) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (d) AH Zone Drainage. Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.
- (3) Utilities.
- (a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

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- (b) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
- (c) On-site waste disposal systems shall be located so as to avoid impairment to them or contamination from them during flooding.
- (4) Subdivision Proposals.
- (a) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed so as to minimize flood damage.
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (d) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).
- (5) Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source (TDC 70.140(2)), applications for buildings permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

Section 5. TDC 70.180 is amended to read as follows:

Section 70.180 Specific Standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in TDC 70.050, "BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD," or TDC 70.140(2), "USE OF OTHER BASE FLOOD DATA," the following provisions are required:

- (1) Residential Construction.
- (a) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least one foot above the base flood elevation.
- (b) New public streets providing vehicle access to residences, including residences within mixed use developments, shall be constructed at or above the base flood elevation. Public street rights-of-way in existence as of January 14, 1993, shall not be subject to this requirement.
- (c) Below grade crawlspace construction in the floodplain shall comply with all NFIP specifications and applicable Building Code Requirements.
 - (2) Nonresidential Construction.

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated at least one foot above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

inance i	1265-08	Page 5 of 6

- (a) Be floodproofed so that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water.
- (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and review of the structural design, specifications and plans. Such certification shall be provided to the official as set forth in TDC 70.140(3)(b).
- (d) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
- (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- (ii) The bottom of all openings shall be no higher than one foot above grade.
- (iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood-waters.
- (e) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as one foot below that level).
- (3) <u>Manufactured Dwellings</u>. Manufactured dwellings placed or substantially improved within Zones A1-30, AH, and AE shall be on a permanent foundation and shall have the lowest floor, including basement, elevated at least one foot above the base flood elevation and shall be securely anchored to a foundation system in accordance with TDC 70.170(1)(b).
- (4) <u>Recreational Vehicles.</u> Recreational vehicles that are permanently placed or substantially improved within Zones A1-30, AH, and AE shall be on a permanent foundation and shall have the lowest floor, including basement, elevated at least one foot above the base flood elevation and shall be securely anchored to a foundation system in accordance with TDC 70.170(1)(b).

INTRODUCED AND ADOPTED this 28th day	of July, 2008.
APPROVED AS TO LEGAL FORM	CITY OF TUALATIN, Oregon BY Mayor
Branda L. Braden CITY ATTORNEY	ATTEST: BY Sowby City Recorder

Ordinance No. 1265-08 Page 6 of 6



6605 SE Lake Road, Portland, OR 97222 • PO Box 370 • Beaverton, OR 97075 Phone: 503-684-0360 Fax: 503-620-3433 Email:

legaladvertising@commnewspapers.com

AFFIDAVIT OF PUBLICATION

State of Oregon, County of Washington, SS

I, Charlotte Allsop, being the first duly sworn, depose and say that I am the Accounting Manager of *The Times* (serving Tigard, Tualatin & Sherwood), a newspaper of general circulation, published at Beaverton, in the aforesaid county and state, as defined by ORS 193.010 and 193.020, that

City of Tualatin Notice of Public Hearing TT11162

A copy of which is hereto annexed, was published in the entire issue of said newspaper for

Successive and consecutive weeks in the following issues June 26, 2008

Charlotte Allsop (Accounting Manager)

Subscribed and sworn to before me this

June 26, 2008

NOTARY PUBLIC FOR OREGO

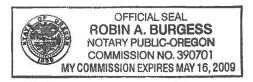
My commission expires

Acct #108462 Stacy Crawford City of Tualatin 18880 SW Martinazzi Ave Tualatin, OR 97062

> Size 2 x 6.25 Amount Due \$113.13 *remit to address above

NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., Monday, July 14, 2008, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider: PLANTEXTAMENDMENT (PTA) 08-02— ORDINANCE RELATING TO FLOODPLAIN MANAGEMENT; AMENDING FLOODPLAIN DISTRICT DEFINITIONS AND PROVISIONS; AND AMENDING TDC 70.020, 70.030-.040, 70.160 & 70.180 (PTA-08-02). Before granting the proposed amendments, the City Council must find that: (1) Granting the amendments is in the public interest; (2) The public interest is best protected by granting the amendments at this time; (3) The proposed amendments are in conformity with the applicable objectives of the Tualatin Community Plan; (4) The factors listed in Section 1.032(4) were consciously considered; (5) The Tigard Tualatin School District Facility Plan was considered: (6) The amendments are consistent with the Statewide Planning Goals; (7) The amendments are consistent with the Metro Urban Growth Management Functional Plan; and (8) The amendments are consistent with Level of Service F for the PM peak hour and E for the one-half hour before and after the PM peak hour for the Town Center 2040 Design Type and E/E for the rest of the 2040 Design Types in the City's planning area. Individuals wishing to comment may do so in writing to the Planning Division prior to the hearing and/or present written and/or verbal testimony to the City Council at the hearing. Hearings begin with a staff presentation, followed by testimony by proponents, testimony by opponents, and rebuttal. The time of individual testimony may be limited. If a participant requests, before the hearing is closed, the record shall remain open for at least 7 days after the hearing. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to the decision maker to respond to the issue precludes an action for damages in circuit court. Copies of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. For information contact William Harper at (503) 691-3027. This meeting and any materials being considered can be made accessible upon request. CITY OF TUALATIN, OREGON. By: Sherilyn Lombos, City Recorder. Publish 6/26/2008. TT11162.



AFFIDAVIT OF POSTING

RE: PLAN TEXT AMENDMENT (PTA) 08-02—ORDINANCE RELATING TO

DEFINITIONS; AND PROVISIONS AND AMENDING TDC 70.020, 70.030-

FLOODPLAIN MANAGEMENT; AMENDING FLOODPLAIN

70.040, 70.160 AND 70.180



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

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PLAN TEXT AMENDMENT (PTA) 08-02— ORDINANCE RELATING TO FLOODPLAIN MANAGEMENT; AMENDING FLOODPLAIN DISTRICT DEFINITIONS AND PROVISIONS; AND AMENDING TDC 70.020, 70.030-.040, 70.160 & 70.180 (PTA-08-02)

Before granting the proposed amendments, the City Council must find that: (1) Granting the amendments is in the public interest; (2) The public interest is best protected by granting the amendments at this time; (3) The proposed amendments are in conformity with the applicable objectives of the Tualatin Community Plan; (4) The factors listed in Section 1.032(4) were consciously considered; (5) The Tigard Tualatin School District Facility Plan was considered; (6) The amendments are consistent with the Statewide Planning Goals; (7) The amendments are consistent with the Metro Urban Growth Management Functional Plan; and (8) The amendments are consistent with Level of Service F for the PM peak hour and E for the one-half hour before and after the PM peak hour for the Town Center 2040 Design Type and E/E for the rest of the 2040 Design Types in the City's planning area.

Individuals wishing to comment may do so in writing to the Planning Division prior to the hearing and/or present written and/or verbal testimony to the City Council at the hearing. Hearings begin with a staff presentation, followed by testimony by proponents, testimony by opponents, and rebuttal. The time of individual testimony may be limited. If a participant requests, before the hearing is closed, the record shall remain open for at least 7 days after the hearing. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to the decision maker to respond to the issue precludes an action for damages in circuit court.

Copies of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. For information contact William Harper at (503) 691-3027. This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON

By: Sherilyn Lombos City Recorder

NOTICE TO THE TUALATIN TIMES: Please publish in the TUALATIN TIMES on

(June 26, 2008).

Mailed: 6/12/08



STAFF REPORT CITY OF TUALATIN

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Sherilyn Lombos, City Manager

FROM:

Doug Rux, Community Development Director

William Harper, Associate Planner

DATE:

July 14, 2008

SUBJECT:

ORDINANCE RELATING TO FLOODPLAIN MANAGEMENT;

AMENDING FLOODPLAIN DISTRICT DEFINITIONS AND PROVISIONS; AND AMENDING TDC 70.020, 70.030-70.040.

70.160 & 70.180 (PTA-08-02)

ISSUE BEFORE THE CITY COUNCIL:

Whether the City Council should amend the Tualatin Development Code (TDC) Chapter 70-Floodplain District. The proposed amendment will revise and add definitions in TDC 70.030 consistent with current FEMA (Federal Emergency Management Agency) and Flood Insurance Administration (FIA) definitions and amend Administration and Flood Hazard Reduction provisions in TDC 70.130-73.190 consistent with FEMA and FIA standards for participation in the National Flood Insurance Program (NFIP).

RECOMMENDATION:

The Tualatin Planning Advisory Committee (TPAC) voted 4-0 on June 12, 2008, recommending that the City Council approve PTA-08-02. The TPAC motion to recommend approval asked staff to consider if additional persons should be named as alternate Flood Plain Administrators and if the City's regulations should require flood venting of garage stem walls. Staff's response to the request are discussed the Executive Summary.

Staff recommends that the City Council consider the staff report and supporting attachments and direct staff to prepare an ordinance granting PTA-08-02 based on the draft ordinance in Attachment A.

EXECUTIVE SUMMARY:

- This matter is a legislative action.
- This matter is a Plan Text Amendment (PTA) to the Tualatin Development Code.
- The applicant is Dayna Webb of the Engineering Division.

- The City of Tualatin Engineering Division was contacted by the Oregon Department of Land Conservation and Development (DLCD) in 2007 in regard to updating Tualatin's Floodplain Ordinance in respect to current Federal Emergency Management (FEMA) and Flood Insurance Administration (FIA) provisions for Flood Hazard Reduction and continued participation in the National Flood Insurance Program (NFIP). DLCD is the official State Coordinating Agency for the Federal Insurance Administration. Because of the City's participation in the NFIP program and adoption of Flood Hazard Reduction standards, properties in the City of Tualatin are eligible for NFIP flood insurance. DLCD recommended revisions to Tualatin's Floodplain District ordinance consistent with current FEMA & FIA standards and definitions.
- The Engineering Division reviewed the DLCD recommendations and prepared the proposed amendment that revises and adds to TDC Chapter 70 Floodplain District definitions in 70.030, designates the City Engineer as the Local Floodplain Administrator, and revises specific standards for Flood Hazard Reduction in TDC 70.170 -70.180. No changes to existing definitions in TDC 1.020 or 31.060 related to manufactured homes and home parks or mobile homes and home parks are proposed.
- The existing Tualatin Floodplain District provisions are based on the 1987 Flood Insurance Study and provide measures and standards for reducing flood losses for development in the 100 year (Tualatin River) Floodplain. The current Floodplain District regulations in Chapter 70 require new construction or substantial improvements of any residential structure to have the lowest floor, including basement, elevated at least one foot above the base flood elevation [TDC 70.180(1)(a)]. The base flood elevation is the elevation of a 100-year flood at a particular location. Nonresidential structures (including mixed-use residential/commercial) are required to meet the one-foot-above-base flood elevation requirement or meet standards for floodproofing the lowest floor (including basement) in TDC 70.180(2)(a-d). Floodproofing includes making the structure watertight and capable of resisting the force of floodwater and effects of buoyancy.
- At a future date (expected in Late-2008 or 2009) the Washington County Flood Insurance Study and Flood Insurance Rate Maps will be updated in respect to the FEMA Floodplain studies currently underway. Tualatin will be required to adopt the updated Floodplain and Flood Insurance measures within six months of a Final Determination Letter issuance. The update will be the subject of a future Plan Amendment application. Attachment D is a Map of the Tualatin River Floodplain.
- The public interest in updating the Floodplain District provisions is retaining eligibility for NFIP Flood Insurance coverage. With local compliance with FEMA and FIA requirements, local landowners can qualify for favorable NFIP risk premiums. Compliance will help ensure that development in the floodplain areas of Tualatin will be constructed in a manner that protects life and property.
- The June 12 TPAC motion to recommend approval of the PTA asked staff to consider if additional persons should be named as alternate Flood Plain

Administrators and if the City's regulations should require flood venting of garage stem walls. The City Engineer currently has authority in TDC Chapter 31 to assign a designee for an authority such as Floodplain Administrator and staff does not recommend adding this authority to the proposed amendment language.

The Building and Engineering Department believes that modifying the specific standards for floodproofing and construction are not required at this time for FEMA and FIA compliance and represents a change in policy for the Floodplain District that requires careful consideration of its impacts on development. Staff agrees with the Building and Engineering Division recommendation to consider venting standards and other policy questions with the Updated FEMA Flood Map adoption process that will commence later this year.

- The proposed PTA language as prepared by staff is provided in Attachment A. The Plan Amendment approval criteria are addressed in the Analysis and Findings section of this report (Attachment C).
- The applicable policies and regulations that apply to the proposal include: TDC 1.032-Amendments; TDC 4.050 Community Growth-Objectives and TDC Chapter 70-Floodplain District. The Analysis and Findings section of this report (Attachment C) considers the applicable policies and regulations.
- Before granting the proposed PTA, the City Council must find that the criteria listed in TDC 1.032 are met. The Analysis and Findings section of this report (Attachment C) examines the application with respect to the criteria for a Plan Amendment.

OUTCOMES OF DECISION:

Approval of the PTA request will result in the following:

- 1. Revisions to definitions, administrative procedures and Flood Hazard Reduction standards for development in the floodplain in TDC Chapter 70 that will be consistent with current FEMA and FIA provisions.
- 2. Tualatin and properties in Tualatin will continue to remain subject to current Floodplain District regulations and will remain eligible for National Flood Insurance Program coverage.

Denial of the PTA request will result in the following:

1. The current provisions of the Floodplain District will remain unchanged and will not be consistent with current FEMA and FIA provisions for local participation in the NFIP. Flood Insurance premiums may be higher for properties in Tualatin.

ALTERNATIVES TO RECOMMENDATION:

The alternatives to the staff recommendation to Council are:

- Approve the proposed PTA with alterations.
- Deny the request for the proposed PTA.
- Continue the discussion of the proposed PTA and return to the matter at a later date.

STAFF REPORT: PTA-08-02—Amend Floodplain District Definitions & Provisions July 14, 2008 Page 4

FINANCIAL IMPLICATIONS:

The Applicant is the City of Tualatin Engineering Division. No fee is required. Funds have been budgeted in the Planning Divisions FY07/08 budget to prepare and process City initiated amendments.

PUBLIC INVOLVEMENT:

The proposed amendment is a legislative amendment and no neighbor/developer meeting was held.

- Attachments: A. Proposed Text Amendment Language-TDC 70.030, 70.040, 70.160; & 70.180
 - B. Background Information C. Analysis and Findings
 - D. Map of Floodplain (Unofficial)

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Ordinance No.	

AN ORDINANCE RELATING TO FLOODPLAIN MANAGEMENT; AMENDING FLOODPLAIN DEFINITIONS AND PROVISIONS; AND AMENDING TDC 70.030, 70.130, 70.140, 70.170 AND 70.180 (PTA-08-02).

WHEREAS notice of public hearing was given as required under the Tualatin Community Plan by publication on June 26, 2008, in <u>The Times</u>, a newspaper of general circulation within the City, which is evidenced by the Affidavit of Publication marked "Exhibit A," attached and incorporated by this reference; and by posting a copy of the notice in two public and conspicuous places within the City, which is evidenced by the Affidavit of Posting marked "Exhibit B," attached and incorporated by this reference; and

WHEREAS the Council conducted a public hearing on July 14, 2008, and heard and considered the testimony and evidence presented by the City staff and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing the Council vote resulted in approval of the application by a vote of [X-X]; and

WHEREAS based upon the evidence and testimony heard and considered by the Council and especially the City staff report dated July 14, 2008, the Council makes and adopts as its Findings of Fact the findings and analysis in the staff report attached as "Exhibit C," which are incorporated by this reference; and

WHEREAS based upon the foregoing Findings of Fact, the City Council finds that it is in the best interest of the residents and inhabitants of the City and the public; the public interest will be served by adopting the amendment at this time; and the amendment conforms with the Tualatin Community Plan; and therefore, the Tualatin Development Code should be amended. Therefore,

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TDC 70.030 is amended to add new definitions, amend existing definitions, or delete the following definitions in alphabetical order to read as follows:

Section 70,030 Definitions.

<u>Critical Facility</u>. Facilities such as hospitals, fire stations, police stations, storage of critical records and similar facilities.

<u>Development</u>. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations *or storage of equipment or materials* located within the area of special flood hazard.

<u>Elevated Building</u>. For insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns.

<u>Existing manufactured home park or subdivision</u>. A manufacturing home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

<u>Functionally-Water Dependent Use</u>. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Manufactured Home. A structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, recreational vehicles, and other similar vehicles placed on a site for more than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, recreational vehicles, and other similar vehicles placed an a site for 180 consecutive days or fewer.

New manufactured home park or subdivision. A manufacturing home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by a community.

Recreational Vehicle. A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-

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propelled or permanently towable by a light duty truck and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

<u>Substantial Damage</u>. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal to or exceed 50 percent of the market value of the structure before the damage occurred.

Section 2. TDC 70.130 is amended to read as follows:

70.130 Designation of the City Engineer.

The City Engineer is hereby appointed as the Local Floodplain Administrator to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

Section 3. TDC 70.140 is amended to read as follows:

70.140 Duties and Responsibilities of the City Engineer.

Duties of the City Engineer shall include but not be limited to those listed in this Section.

- (1) Permit Review.
- (a) Review all development permits to determine that the permit requirements of this Chapter have been satisfied.
- (b) Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
- (c) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of TDC 70.190(1) are met.
- (2) <u>Use of Other Base Flood Data</u>. When base flood elevation data has not been provided in accordance with TDC 70.050, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the City Engineer shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer TDC 70.180, SPECIFIC STANDARDS, and TDC 70.190 FLOODWAYS.
- (3) Information to Be Obtained and Maintained.
- (a) Where base flood elevation data is provided through the Flood Insurance Study or as required under subsection (2), obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (b) For all new or substantially improved floodproofed structures:
 - (i) Verify and record the actual elevation (in relation to mean sea level); and
 - (ii) Maintain the floodproofing certifications required by TDC 70.120(3).
- (c) Maintain for public inspection all records pertaining to the provisions of this

Attachment A PTA-08-02 Proposed Text Language



Chapter.

- (4) Alteration of Watercourses.
- (a) Notify adjacent communities and the State coordinating agency (*Department* of Land Conservation and Development) prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (b) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Interpretation of FIRM Boundaries. Make interpretations when needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in TDC 70.150.

Section 4. TDC 70.170 is amended to read as follows:

70.170 General Standards.

In all areas of special flood hazards, the following standards are required:

- (1) Anchoring.
- (a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (b) All manufactured dwellings must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques.)
- (2) Construction Materials and Methods.
- (a) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (c) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (d) AH Zone Drainage. Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.
- (3) Utilities.
- (a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (b) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
- (c) On-site waste disposal systems shall be located so as to avoid impairment to

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them or contamination from them during flooding.

- (4) Subdivision Proposals.
- (a) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed so as to minimize flood damage.
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (d) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).
- (5) Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source (TDC 70.140(2)), applications for buildings permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

Section 5. TDC 70.180 is amended to read as follows:

Section 70.180 Specific Standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in TDC 70.050, "BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD," or TDC 70.140(2), "USE OF OTHER BASE FLOOD DATA," the following provisions are required:

- (1) Residential Construction.
- (a) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least one foot above the base flood elevation.
- (b) New public streets providing vehicle access to residences, including residences within mixed use developments, shall be constructed at or above the base flood elevation. Public street rights-of-way in existence as of January 14, 1993, shall not be subject to this requirement.
- (c) Below grade crawlspace construction in the floodplain shall comply with all NFIP specifications and applicable Building Code Requirements.
 - (2) Nonresidential Construction.

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated at least one foot above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- (a) Be floodproofed so that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water.
- (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Attachment A PTA-08-02 Proposed Text Language

- (c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and review of the structural design, specifications and plans. Such certification shall be provided to the official as set forth in TDC 70.140(3)(b).
- (d) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
- (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- (ii) The bottom of all openings shall be no higher than one foot above grade.
- (iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood-waters.
- (e) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as one foot below that level).
- (3) <u>Manufactured Dwellings.</u> Manufactured dwellings placed or substantially improved within Zones A1-30, AH, and AE shall be on a permanent foundation and shall have the lowest floor, including basement, elevated at least one foot above the base flood elevation and shall be securely anchored to a foundation system in accordance with TDC 70.170(1)(b).
- (4) <u>Recreational Vehicles.</u> Recreational vehicles placed or substantially improved within Zones A1-30, AH, and AE shall be on a permanent foundation and shall have the lowest floor, including basement, elevated at least one foot above the base flood elevation and shall be securely anchored to a foundation system in accordance with TDC70(1)(b).

INTRODUCED AND ADOPTED this	_ day of, 2008.
	CITY OF TUALATIN, Oregon
	BY
	Mayor
	ATTEST:
	BY
	City Recorder

ATTACHMENT B

PTA-08-02: BACKGROUND INFORMATION

Pertinent background information obtained from the proposed PTA-08-02 and other supporting documents is summarized in this section.

The applicant is Dayna Webb, Project Engineer of the Engineering Division. The proposed amendment is in response to an Oregon Department of Land Conservation and Development (DLCD) recommendation to update Tualatin's Floodplain Ordinance in respect to current Federal Emergency Management (FEMA) and Flood Insurance Administration (FIA) provisions for Flood Hazard Reduction. Tualatin participates in the National Flood Insurance Program (NFIP), which requires local regulations to reduce flood hazard losses. DLCD is the official State Coordinating Agency for the Federal Insurance Administration. DLCD recommended revisions to Tualatin's Floodplain District ordinance consistent with current FEMA standards and definitions standards in TDC Chapter 70- Floodplain District to comply with current federal flood insurance programs.

The City's existing Floodplain District regulations originated in 1987 (Ordinance 717-87) in compliance with the FIA 1987 Washington County Flood Insurance Study and accompanying Flood Insurance Maps. With adoption of the local Floodplain regulations consistent with the Federal program, properties in the City of Tualatin are eligible for NFIP flood insurance. Minor amendments to definitions, administration and Flood Hazard Reduction measures in Chapter 70 were adopted by ordinance in 1997, 1998 and 2000.

The existing Tualatin Floodplain District provisions provide measures and standards for reducing flood losses for development in the 100 year (Tualatin River) Floodplain. The current Floodplain District regulations in Chapter 70 require new construction or substantial improvements of any residential structure to have the lowest floor, including basement, elevated at least one foot above the base flood elevation [TDC 70.180(1)(a)]. The base flood elevation is the elevation of a 100-year flood at a particular location. Nonresidential structures (including mixed-use residential/commercial) are required to meet the one-foot above-base flood elevation requirement or meet standards for floodproofing the lowest floor (including basement) in TDC 70.180(2)(a-d). Floodproofing includes making the structure watertight and capable of resisting the force of floodwater and effects of buoyancy.

ATTACHMENT C

PTA-08-02: ANALYSIS AND FINDINGS

The approval criteria of the Tualatin Development Code (TDC) 1.032 must be met if the proposed PTA is to be granted. The Plan Amendment criteria are addressed below.

A. Granting the amendment is in the public interest.

The proposed amendment to the <u>Tualatin Development Code</u> (TDC) Chapter 70 Floodplain District (FP) adds or revises definitions of terms associated the Floodplain District such as manufactured or mobile home park or subdivision and such as critical facility and substantial damage; designates the City Engineer as the Local Floodplain Administrator and updates the existing standards for development in the floodplain consistent with current measures and standards required for participation in the National Flood Insurance Program (NFIP). The public interest is for the City of Tualatin to have measures for protecting life and property from natural hazards such as flooding. The public interest is for the City to comply with FEMA (Federal Emergency Management Agency) and FIA (Flood Insurance Administration) requirements to continue participation in the NFIP program, allowing local properties in the floodplain to qualify for federal flood insurance.

TDC Chapter 70 is City of Tualatin's regulations that provide measures and standards intended to minimize public and private losses due to flood conditions. The proposed amendment updates Floodplain District definitions, terms measures and standards for flood protection in the City based on the current requirements of the NFIP. The Floodplain District continues to be the City's regulations for protecting life and property from Flood Hazard and, with the proposed amendment, satisfies the public interest.

The City of Tualatin participates in the NFIP, which allows local properties in the floodplain to qualify for favorable federal flood insurance. With portions of the City of Tualatin located in the Tualatin River 100-year Floodplain, NFIP participation and eligibility for federal flood insurance is a substantial public benefit. To retain eligibility for the NFIP, the City is required to have flood hazard reduction measures and standards in place and to comply with FEMA and FIA requirements. The proposed amendment updates the Floodplain District provisions consistent with the current FEMA and FIA requirements for NFIP participation, meeting the public interest.

Granting the amendment is in the public interest. Criterion "A" is met.

B. The public interest is best protected by granting the amendment at this time.

The proposed amendments to the City's Floodplain District regulations will update definitions, terms, measures and standards in compliance with current FEMA and FIA requirements and continued participation in the NFIP. DLCD has recommended that Tualatin amend the Floodplain District provisions now and prior to the pending Washington County Flood Insurance Study that is expected to be issued in mid-2008 to

PTA-08-02: Attachment C-Analysis and Findings July 14, 2008 Page 2

2009. The new Flood Insurance Study will update the FEMA Tualatin River flood boundaries and trigger a Letter of Final Determination for cities such as Tualatin. From the Letter of Final Determination date, Tualatin will have six months to adopt the new study and the new FEMA Floodplain and Floodway Boundary Maps. Now is the time to amend the TDC to update the Floodplain District language consistent with current FEMA and FIA requirements. The public interest in complying with DLCD's recommendation and having requirements and provisions for development in the floodplain consistent with FEMA & FIA requirements is protected with adoption at this time.

The public interest is best protected by granting the amendment at this time.

Criterion "B" is met.

C. The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan.

The applicable objective of the Tualatin Community Plan is presented below.

Community Growth Objective 12 [TDC 4.050(12)] "Adopt measures protecting life and property from natural hazards such as flooding, high groundwater, weak foundation soils and steep slopes." The proposed amendments to Chapter 70 Floodplain District will help ensure that new development is constructed in accordance with current FEMA requirements for protecting life and property from flooding damage and continue its eligibility for the NFIP in accordance with current FIA requirements. The proposed amendment is consistent with Community Growth, Objective 12.

The proposed amendment conforms to the applicable objectives of the Tualatin Community Plan.

Criterion "C" is met.

D. The factors listed in Section 1.032(4) were consciously considered:

The various characteristics of areas in the City.

The characteristics of the area of the City affected by this amendment are properties located in the Tualatin River 100-year floodplain. The proposed amendments to the Floodplain District provisions are intended to update the provisions for compliance and consistency with FEMA and FIA requirements and continue the City's participation in the NFIP. Properties in the 100-year Floodplain are eligible for NFIP coverage.

The suitability of the area for particular land uses and improvements.

Development in the Tualatin River floodplain is subject to the regulations of TDC Chapter 70. The particular land uses and improvements must comply with the floodplain District requirements and are eligible for the NFIP that provides flood loss coverage.

Trends in land improvement and development.

There is existing development on property in the floodplain areas of Tualatin and land improvement and development activities on floodplain properties continue subject to the Floodplain District regulations. Properties in the City of Tualatin floodplain are eligible for reduced premiums when participating in FEMA and FIA flood insurance programs. The proposed amendments will ensure up to date compliance with FEMA and FIA requirements and help retain the best possible flood insurance rates for developments in Tualatin.

Property values.

Properties in the floodplain areas of Tualatin are eligible for favorable flood insurance rates due to compliance with FEMA and FIA program requirements. Having lower cost flood insurance is a benefit to property value. The proposed amendments will ensure up to date compliance with FEMA and FIA requirements and help retain the best possible flood insurance rates for developments in Tualatin. This will contribute to higher property values.

The needs of economic enterprises and the future development of the area.

Continued participation in the NFIP allows development to obtain federal flood loss coverage. This is an economic factor for development in the floodplain.

Needed right-of-way and access for and to particular sites in the area.

Not applicable.

Natural resources of the City and the protection and conservation of said resources.

Not applicable.

Prospective requirements for the development of natural resources in the City.

Not applicable.

The public need for healthful, safe, aesthetic surroundings and conditions.

The purpose of the proposed amendment is to update the City's Floodplain District provisions for consistency with FEMA and FIA. The proposed amendment will reinforce the City's flood hazard provisions and help to provide healthful and safe surroundings and conditions.

Proof of a change in a neighborhood or area.

No change is alleged. Not applicable.

PTA-08-02: Attachment C--Analysis and Findings July 14, 2008 Page 4

A mistake in the plan map or text.

None is alleged.

The factors listed in Section 1.032(4) were consciously considered.

Criterion "D" is met.

E. The criteria in the Tigard-Tualatin School District Facility Plan were considered.

The criteria in the Facility Plan were considered and found to not be applicable to this amendment regarding the floodplain because it does not apply to existing school sites and does not represent a constraint or conflict with land available for future school sites.

F. Oregon Statewide Planning Goals

Of the 14 Statewide Goals, each of the goals were considered and Goals 1-6 and 8-19 were found to not be applicable to this amendment regarding the Floodplain District.

Goal 7. Areas Subject to Natural Disasters and Hazards. Goal 7 is "To protect life and property from natural disasters and hazards." Stream flooding such as can occur in the Tualatin basin is a natural hazard. The proposed amendment will bring the City's Chapter 70 Floodplain District standards into conformance with current FEMA and FIA requirements and provide protection of life and property from flooding hazards. Goal 7 is met.

G. Metro's Urban Growth Management Functional Plan (UGMFP).

The UGMFP, Title 3 (Water Quality and Flood Management Conservation). The Title 3 Section 4A Flood Management Performance Standards include requirements for development, excavation and fill in Flood Management Areas [Title 3, Section 4(A)(2)(a-f)]. Tualatin's existing flood management measures and standards comply with Title 3. The proposed amendments are minor changes to definitions, terms measures and standards in compliance with FEMA and FIA requirements and do not conflict with the Metro Flood Management Performance Standards.

The proposed language is consistent with and complies with the UGMFP.

H. (Criterion 8) Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City's Planning Area.

Criterion 8 was considered and found to not be applicable to this amendment regarding the Floodplain District because it does not have any impact on Level of Service on transportation facilities.

Deta_

Recording Segratary



STAFF REPORT CITY OF TUALATIN

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Sherilyn Lombos, City Manager

FROM:

Captain Brad King, Police Department

DATE:

July 28, 2008

SUBJECT:

PRISONER PROPERTY INVENTORY

ISSUE BEFORE THE COUNCIL:

Enactment of an ordinance authorizing the inventorying of the property of prisoners who are temporarily housed in the Tualatin Police Temporary Holding Facility.

RECOMMENDATION:

- The Washington County District Attorney's Office has reviewed Tualatin Police Department Policy #900 – "Temporary Holding Facility", and recommends its section(s) concerning "property inventory" be adopted and approved as an ordinance to meet legal "tests" for criminal prosecution purposes and civil protection.
- Staff recommends approval and adoption of this ordinance.

EXECUTIVE SUMMARY:

Since 2000, the Tualatin Police Department has operated the Tualatin Police Temporary Holding Facility for the purpose of temporary (less than 4 hours) detention of persons in custody for: transport to another custodial facility, i.e. county jail; investigative needs and/or awaiting release to a responsible party. Since that time, the Temporary Holding Facility has been operated under an old policy and now a new (Lexipol) policy with the intent of protecting the prisoner, the prisoner's rights and property, the City, and its officers.

One aspect of the new policy (similar to the old policy) is a complete inventory of the prisoner's property upon the prisoner being brought into the Temporary Holding Facility. The purpose of the property inventory is as follows:

- 1. Promptly identify property to establish accountability and avoid spurious claims to property;
- 2. Fulfill the requirement of ORS 133.455 to the extent that such statute may apply to certain property held by the officer for safekeeping:

Staff Report: Prisoner property July 28, 2008 Page 2 of 3

- 3. Assist in the prevention of theft of property;
- 4. Locate toxic, flammable or explosive substances;
- 5. Locate weapons and instruments that may facilitate an escape from custody or endanger law enforcement personnel; or
- 6. Reduce the danger to persons and property.

Pursuant to several Oregon State Supreme Court and Oregon State Court of Appeals cases, to be discussed below, a three-part test exists concerning the lawful inventory of lawfully seized vehicles and persons. That test is as follows:

- 1. The state must lawfully possess the property it inventories (e.g. as a result of an authorized vehicle impoundment, a lawful arrest, or civil hold);
- 2. The inventory must be "conducted pursuant to a properly authorized administrative program, designed and systematically administered so that the inventory involves no exercise of discretion"; and
- 3. The person conducting the inventory must follow the specified procedures.

Tualatin Police Department Policy #900 – "Temporary Holding Facility", meets all of the requirements of the below case law and the three-part test other than its authorization by a "politically accountable lawmaking body".

Applicable case law:

- State v. Atkinson, 298 Or 1, 688 (1984). Inventories in Oregon are controlled by Atkinson. In <u>Atkinson</u>, the Court held that warrantless entry into an impounded vehicle, pursuant to an "adopted and uniformly administered" policy, to inventory the contents in order to protect private property, particularly valuables, discourage false claims against police, and to protect the police against dangerous devices in the vehicle, does not violate Article I section 9 of the Oregon Constitution.
- State v. Herrin, 323 Or 188 (1996). In <u>Herrin</u> the court stated that the state must establish the existence and nature of the inventory policy and the authority (local government) that promulgated the policy.
- State v. Caraher, 293 Or 741, 744-45 (1982). The Court made clear that, while general exploratory searches are not permitted, reasonable booking inspections are permitted in order to itemize and receipt valuable items. The purpose must be administrative, not criminal investigatory.
- State v. Coleman, 196 Or App 125, 129, 100 (2004). A valid administrative search must be conducted for purposes other than law enforcement, pursuant to a policy that is <u>authorized by a politically accountable lawmaking body</u> (emphasis added). Furthermore, to be valid, such a policy must limit the discretion of those responsible for conducting the search and the scope of the search authorized must reasonably relate to its purpose.

Staff Report: Prisoner property July 28, 2008 Page 2 of 3

OUTCOMES OF DECISION:

A positive decision would reduce potential liability to the City and would insulate potential criminal evidence from suppression. A negative decision would leave the City open to potential liability and leave potential criminal evidence open to suppression in court.

FINANCIAL IMPLICATIONS:

This ordinance has not been budgeted for and has no impact on the budget.

Attachments: A. Ordinance

ORDINANCE	NO.	1266-08

AN ORDINANCE RELATING TO PRISONER PROPERTY INVENTORY POLICY; DECLARING AN EMERGENCY; AND ADDING NEW CHAPTER 7-5 TO THE TUALATIN MUNICIPAL CODE

WHEREAS a policy that outlines the inventorying of personal property of a person taken into police custody would reduce potential liability to the City and insulate potential criminal evidence from suppression in court.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. A new section, TMC 7-5-010, is added to the Tualatin Municipal Code to read as follows:

7-5-010 Purpose and Scope.

- (1) The purpose of the inventory of a person in police custody will be to:
 - (a) Promptly identify property to establish accountability and avoid spurious claims to property;
 - (b) Fulfill the requirement of ORS 133.455 to the extent that such statute may apply to certain property held by the officer for safekeeping;
 - (c) Assist in the prevention of theft of property;
 - (d) Locate toxic, flammable or explosive substances;
 - (e) Locate weapons and instruments that may facilitate an escape from custody or endanger law enforcement personnel; or
 - (f) Reduce the danger to persons and property.
- (2) An officer will inventory the personal property of a person taken into police custody and such inventory will be conducted whenever:
 - (a) Such person will be either placed in the secure holding facility or transported in the secure portion of a police vehicle; or
 - (b) Custody of the person will be transferred to another law enforcement agency, correctional facility, or "treatment facility" as that phrase is used in ORS 426.460, or such other lawfully approved facility for involuntary confinement of persons pursuant to Oregon Revised Statute.

Section 2. A new section, TMC 7-5-020, is added to read as follows:

7-5-020 Procedures.

Inventories of the personal property in the possession of such persons will be conducted according to the following procedures:

(1) An inventory will occur prior to placing such person into the temporary holding facility or a police vehicle, whichever occurs first.

However, if there is reasonable suspicion to believe the safety of the officer, officers, the person in custody or any other person is at risk, an inventory will be done as soon as is safely practical prior to the transfer of custody to another officer, into a police vehicle, and/or to another law enforcement agency or facility.

- (2) To complete the inventory of the personal property in the possession of such person, the officer will remove all items of personal property from the clothing worn by such person. In addition, the officer will also remove all items of personal property from all open containers (containers which are unsecured or incompletely secured in such a fashion that the container's contents are exposed to view) in the possession of such persons.
- (3) Closed containers located within the personal property of such persons will not be opened for inventory purposes except for the following, which shall be opened for inventory: wallets, purses, coin purses, fanny packs, personal organizers, briefcases or other closed containers designed for or likely to contain money or small valuables, or closed containers which are designed for hazardous materials.
- (4) All items of personal property will be secured in the temporary holding facility or in the police vehicle. No personal property will be retained by any such person in police custody.
- (5) Valuables found during the inventory process will be noted by the officer in a report as directed by the Tualatin Police Department.
- (6) Release of personal property shall be pursuant to § 900.82.

Section 3. A new section, TMC 7-5-030, is added to read as follows:

7-5-030 Emergency Clause.

This ordinance is necessary to protect the public health, safety and welfare, to reduce potential liability to the City, and to insulate potential criminal evidence from suppression in court, and shall take effect immediately.

INTRODUCED AND ADOPTED this 28th day of July, 2008

CITY OF TUALATIN, Oregon

APPROVED AS TO LEGAL FORM

BY

Mayor

CITY ATTORNEY

ATTEST:

BY

City Recorder



STAFF REPORT CITY OF TUALATIN

Deta July 28, 2008
Recording Secretary 9 Kyrling

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Sherilyn Lombos, City Manager

FROM:

Captain Brad King, Police Department

DATE:

July 28, 2008

SUBJECT:

VEHICLE INVENTORY

ISSUE BEFORE THE COUNCIL:

Enactment of an ordinance authorizing the inventorying of vehicles by officers of the Tualatin Police Department which were operated in violation of laws.

RECOMMENDATION:

- The Washington County District Attorney's Office has reviewed Tualatin Police Department Policy #510 – "Vehicle Towing Policy" and recommends its adoption and approval as an ordinance to meet legal "tests" for criminal prosecution purposes and civil protection.
- Staff recommends approval and adoption of this ordinance.

EXECUTIVE SUMMARY:

Pursuant to several Oregon State Supreme Court and Oregon State Court of Appeals cases, to be discussed below, a three-part test exists concerning the lawful inventory of lawfully seized vehicles and persons. That test is as follows:

- 1. The state must lawfully possess the property it inventories (e.g. as a result of an authorized vehicles impoundment, a lawful arrest, or civil hold);
- 2. The inventory must be "conducted pursuant to a properly authorized administrative program, designed and systematically administered so that the inventory involves no exercise of discretion"; and
- 3. The person conducting the inventory must follow the specified procedures.

In 2000, a rewrite of the then active Tualatin Police Department policy concerning inventorying vehicles that were towed as a result of their being operated in violation of the law was undertaken and completed to bring that policy in line with the above three-part test. That policy was to have been presented to the Tualatin City Council and codified so as to afford the City civil protection and to insulate criminal evidence discovered during the inventory.

Staff Report: Vehicle inventory

July 28, 2008 Page 3 of 3

By error, that policy was never presented to the Council for enactment as an ordinance. This error was discovered during the process of formulating a new policy manual for the Tualatin Police Department in late 2007. This staff report and the attached ordinance seek to rectify that error and bring the City of Tualatin into conformance regarding the necessary inventorying of vehicles prior to their being towed as stated.

Tualatin Police Department Policy #510 – Vehicle Towing Policy meets all of the requirements of the below case law and the above-mentioned three-part test, other than its authorization by a "politically accountable lawmaking body".

Applicable case law:

- State v. Atkinson, 298 Or 1, 688 (1984). Inventories in Oregon are controlled by Atkinson. In <u>Atkinson</u>, the Court held that warrantless entry into an impounded vehicle, pursuant to an "adopted and uniformly administered" policy, to inventory the contents in order to protect private property, particularly valuables, discourage false claims against police, and to protect the police against dangerous devices in the vehicle, does not violate Article I section 9 of the Oregon Constitution.
- State v. Herrin, 323 Or 188 (1996). In <u>Herrin</u> the court stated that the state must establish the existence and nature of the inventory policy and the authority (local government) that promulgated the policy.
- State v. Caraher, 293 Or 741, 744-45 (1982).
 The Court made clear that, while general exploratory searches are not permitted, reasonable booking inspections are permitted in order to itemize and receipt valuable items. The purpose must be administrative, not criminal investigatory.
- State v. Coleman, 196 Or App 125, 129, 100 (2004). A valid administrative search must be conducted for purposes other than law enforcement, pursuant to a policy that is <u>authorized by a politically accountable lawmaking body</u> (emphasis added). Furthermore, to be valid, such a policy must limit the discretion of those responsible for conducting the search and the scope of the search authorized must reasonably relate to its purpose.

OUTCOMES OF DECISION:

A positive decision would reduce potential liability to the City and would insulate potential criminal evidence from suppression. A negative decision would leave the City open to potential liability and leave potential criminal evidence open to suppression in court.

FINANCIAL IMPLICATIONS:

This ordinance has not been budgeted for and has no impact on the budget.

Attachments: A. Ordinance

ORDINANCE NO.	1267-08
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AN ORDINANCE RELATING TO VEHICLE TOWING, IMPOUNDING, AND INVENTORY POLICY; DECLARING AN EMERGENCY; AND ADDING NEW CHAPTER 7-4 TO THE TUALATIN MUNICIPAL CODE

WHEREAS a policy that outlines the impoundment and subsequent inventorying of vehicles operated in violation of laws would reduce potential liability to the City and insulate potential criminal evidence from suppression in court.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. A new section, TMC 7-4-010, is added to the Tualatin Municipal Code as follows:

7-4-010 Definitions.

As used in this chapter:

- (1) "Closed container" means a container, the contents of which are not exposed to view.
- (2) "Open container" means a container which is unsecured or incompletely secured in such a fashion that the container's contents are exposed to view.
- (3) "Valuables" means:
 - (a) Cash money of an aggregate amount of fifty dollars or more; or
 - (b) Individual items of personal property with a value of over five hundred dollars.

Section 2. A new section, TMC 7-4-020, is added to read as follows:

7-4-020 Purpose and Scope.

This policy provides the procedures for towing a vehicle by or at the direction of the Tualatin Police Department.

Section 3. A new section, TMC 7-4-030, is added to read as follows:

7-4-030 Vehicles Subject to Impound.

Officers may tow vehicles as a result of the following circumstances:

- (1) Abandoned vehicles.
- (2) Vehicles left standing in or partially blocking the roadway and constituting a hazard.

- (3) As a recovered stolen vehicle.
- (4) A vehicle disabled in a collision.
- (5) As evidence pursuant to a criminal investigation.
- (6) When probable cause exists to believe the vehicle is subject to forfeiture under the Oregon Criminal Forfeiture Law, HB 3457, 2005.
- (7) When the operator is found to be in violation of one of the following traffic offenses, the officer shall tow the vehicle:
 - (a) Driving while suspended or revoked (ORS 809.720).
 - (b) Operating without driving privileges, or in violation of license restrictions (ORS 809.720).
 - (c) Driving while under the influence of intoxicants (ORS 809.720).
 - (d) Driving uninsured (ORS 809.715).

Officers may choose not to tow the vehicle when the officer has received permission from the on duty Supervisor or the Officer in Charge and the officer has demonstrated that towing and impounding the vehicle is not in the best interest of public safety.

Section 4. A new section, TMC 7-4-040, is added to read as follows:

7-4-040 Responsibilities.

The responsibilities of those officers impounding a vehicle are as follows:

- (1) Abandoned Vehicles or Vehicles Constituting a Hazard.
- (a) Vehicles may be considered abandoned only under Tualatin Municipal Code 8-1-260, Storage on Streets and in City-Owned Off-Street Public Parking Facilities and an officer finds the vehicle to be parked in violation of those provisions. The officer should attempt to locate the owner and request the removal of the vehicle. The vehicle may be impounded after the 24-hour period if it has not been moved.
- (b) Vehicles constituting a hazard may be impounded if the owner cannot be located, and the vehicle moved.
- (c) Officers impounding a vehicle shall complete a Miscellaneous Service Report. A copy is to be given to the Records Division as soon as practical after the vehicle is qued for towing.
- (d) The officer should make every effort to promptly enter pertinent data from the completed Vehicle Impound Report into LEDS. If the officer is unable to enter the vehicle information into LEDS, a notification will be sent to the Records Division for entry.
- (e) Once a Vehicle Impound Report is approved and forwarded to the Records Division, it shall be entered in the Tualatin Police Records database and filed so it will be immediately available for release or for information should inquiries be made.
- (2) Removal of Vehicle Disabled in a Traffic Collision.

- (a) When a vehicle has been involved in a traffic collision and must be removed from the scene, the officer shall have the driver select a towing company, if possible, and shall relay the request for the specified towing company to the dispatcher. When there is no preferred company requested, a company will be selected from the no preference towing company list in Dispatch.
- (b) If the owner is incapacitated, or for any reason it is necessary for the Department to assume responsibility for a vehicle involved in a collision, the officer shall request the dispatcher to call a no preference towing company. The officer will then have the vehicle towed to the tow company's storage lot for safekeeping, and complete a Crash Report.
- (3) Notice to Drivers and Owners.
- (a) Officers towing vehicles under ORS 809.720 shall provide the person having operated the vehicle with a Vehicle Impoundment instruction form, which outlines when the officer is allowed to tow the vehicle, how the person can retrieve the vehicle, the current administrative fee and the person's rights to a hearing.
- (b) Once the vehicle is impounded, Records personnel shall mail a copy of the approved Vehicle Impound Report form, along with information describing the location of the vehicle and the procedures for its release, to the legal and registered owners of the stored vehicle within 48 hours after it has been stored, unless the vehicle has been previously released (ORS 819.180).

Section 5. A new section, TMC 7-4-050, is added to read as follows:

7-4-050 Towing Services.

- (1) The City of Tualatin periodically selects a firm to act as the official tow service and awards a contract to that firm. This firm will be used in the following situations:
 - (a) When a vehicle is being held as evidence in connection with an Investigation.
 - (b) Vehicles belonging to the City of Tualatin.

Nothing in this policy shall require the Department to tow a vehicle.

- (2) No Preference Tow Services.
 - (a) Upon proper application, the Washington County Sheriff's Office may approve qualified towing services to be called when a citizen needs towing but has no preference as to which service to call.
 - (b) Any complaint alleging a violation of the agreement or other misconduct by a no preference operator shall be referred to the Washington County Sheriff's Office, Office of Towing Coordination, for investigation. The department may periodically review the performance of each authorized no preference operator.
 - (c) The department will assist citizens by calling any towing

company desired. If the citizen has no preference and requests towing service, one of the authorized firms shall be called in rotation.

(d) All officers are specifically prohibited from directly or indirectly soliciting for or recommending any garage or tow service.

Section 6. A new section, TMC 7-4-060, is added to read as follows:

7-4-060 Vehicle Impound Inventory.

This Chapter is meant to exclusively apply to the process for conducting an inventory of the personal property in an impounded vehicle and shall not be interpreted to affect any other statutory or constitutional right(s) that police officers may employ to search vehicles or persons or to search or seize possessions for other purposes. The contents of all impounded vehicles shall be inventoried in accordance with the following procedure:

- (1) An inventory of personal property and the contents of open containers will be conducted throughout the passenger and engine compartments of the vehicle including, but not limited to, the glove box, other accessible areas under or within the dashboard area, any pockets in the doors or in the back of the front seat, in any console between the seats, under any floor mats and under the seats.
- (2) In addition to the passenger and engine compartments as described above, an inventory of personal property and the contents of open containers will also be conducted in the following locations:
 - (a) Any other type of unlocked compartments that are a part of the vehicle including, but not limited to, unlocked vehicle trunks, unlocked glove compartments, and unlocked car top containers; and
 - (b) Any locked compartments including, but not limited to, locked vehicle trunks, locked hatchbacks and locked car-top containers, if either the keys are available to be released with the vehicle to the third party towing company or an unlocking mechanism for such compartment is available within the vehicle.
- (3) The contents of open containers located within the vehicle or any of the vehicle's compartments will be inspected and inventoried for valuables.
- (4) Closed containers located either within the vehicle or any of the vehicle's compartments will not be opened for inventory purposes except for the following, which shall be opened for inventory: wallets, purses, coin purses, fanny packs, personal organizers, briefcases or other closed containers designed for or likely to contain money or small valuables, or closed containers which are designed for hazardous materials.
- (5) Other closed containers shall be opened and inventoried if the owner acknowledges they contain cash in excess of \$10, valuables or a hazardous material.

- (6) Any valuables, to include cash in excess of \$10 or property valued at more than \$200, located during the inventory process will be listed on a property receipt and stored in this agency's property/evidence room. A copy of the property receipt will either be left in the vehicle or tendered to the person in control of the vehicle if such person is present.
- (7) The inventory is not a search for evidence of a crime. However, officers shall seize evidence or contraband located during the inventory. Items should be scrutinized to the extent necessary to complete the inventory.

These inventory procedures are for the purpose of protecting an owner's property while in police custody, to provide for the safety of officers, and to protect the Department against fraudulent claims of lost, stolen, or damaged property.

Section 7. A new section, TMC 7-4-070, is added to read as follows:

7-4-070 Proof of Ownership.

Any vehicle towed by the Tualatin Police Department, other than as abandoned and/or creating a hazard, shall be released to a registered owner, person possessing proof of ownership, or person acting as his/her agent, so designated in notarized written form.

Proof of ownership shall mean a properly signed certificate of title or other document properly sustaining rightful ownership.

Section 8. A new section, TMC 7-4-080, is added to read as follows:

7-4-080 Security of Vehicles and Property.

Unless it would cause an unreasonable delay in the completion of a vehicle impound/storage or create an issue of officer safety, officers should make reasonable accommodations to permit a driver/owner to retrieve small items of value or personal need (e.g. cash, jewelry, cell phone, prescriptions) which are not considered evidence or contraband.

If a search of a vehicle leaves the vehicle or any property contained therein vulnerable to unauthorized entry, theft or damage, search personnel shall take such steps as are reasonably necessary to secure and/or preserve the vehicle or property from such hazards.

Section 9. A new section, TMC 7-4-090, is added to read as follows:

7-4-090 Release Criteria.

A vehicle impounded under this section shall be released to a person entitled to lawful possession of the vehicle upon compliance with the following:

(1) Proof that a person with valid driving privileges will be operating the vehicle.

- (2) Proof of compliance with financial responsibility requirements for the vehicle.
- (3) Payment of the Tualatin Police Department administrative fee and any towing and storage charges.

Section 10. A new section, TMC 7-4-100, is added to read as follows:

7-4-100 Emergency Clause.

This ordinance is necessary to protect the public health, safety and welfare, to reduce potential liability to the City, and to insulate potential criminal evidence from suppression in court, and shall take effect immediately.

INTRODUCED AND ADOPTED this 28th day of July, 2008.

CITY OF TUALATIN, OREGON

BY_____Mayor

ATTEST:

City Recorder

APPROVED AS TO LEGAL FORM

CITY ATTORNEY